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DOES PROSTITUTION VIOLATE HUMAN DIGNITY?

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ABSTRACT

Traditionally, the law has largely 'understood' and regulated prostitution on the basis of some form of moral reflection on the sale of sex. Such a reflection is evident in recent policy efforts to criminalise the sale and/or purchase of sex, as outlined in inter alia the so-called 'Honeyball Report'. The report suggests that prostitution is a violation of human dignity, which leads to a call to action to criminalise the purchase of sex. This study engages with this proposition, and poses the question: 'Does prostitution violate human dignity?'

There are three core themes of dignity identified across the literature, in human rights theory and in international human rights law, as well as in Article 3 of the European Convention on Human Rights (ECHR), grounded in an understanding that human dignity is inherent and inalienable in all persons. As the Universal Declaration on Human Rights and its associated international conventions recognize, this concept of inherent human dignity is the bedrock upon which human rights are founded. Modern conceptualisations of human dignity constructed by US scholars are appraised and three key descriptive elements of dignity; Inherence, Personal Inviolability and Autonomy are drawn together to form a model, called 'IPA' dignity. Thereafter, the idea of dignity violation is explored and examined using the jurisprudence of Article 3 ECHR to demonstrate judicial recognition of the idea of violation. This 'violation' of dignity as expounded examines various ways in which dignity may be violated. The model is critiqued, and it is established that in order to answer the hypothesis question, a descriptive model of dignity requires some normative framework in order that it be utilised to assess the dignity violation of sex workers in prostitution. The model is considered in a normative usage, according to the natural law theory of John Finnis in *Natural Law and Natural Rights*, in which Finnis sets out a normative call to action for the promotion of certain objective goods, the collective of which amounts to a life 'worth pursuing'.

To provide a sociological context for the study, the subject of prostitution is introduced as it is understood in the academic discipline of sociology, and relevant literature therein is reviewed around the central issue of what is termed here 'the prostitution encounter'; that is, the sale/purchase of sexual services. A sociological explanatory model called the Gender and Male Violence Model (GMV) is justified as most appropriate for the study. Narratives taken from the seminal literature in the sociology of prostitution are analysed using a phenomenological method to consider the experiences of the sex worker of the prostitution encounter, and an evaluation is made as to potential modes of dignity violation within the prostitution encounter. This leads to an indication that the human dignity, modelled as IPA dignity and framed with the normative call to action of Finnis which directs that human agents should promote human flourishing and, a fortiori dignity, may be violated. Using these methods, the study concludes by indicating that prostitution may indeed violate human dignity.

KEYWORDS:

Prostitution and Sex Work; Human Dignity; Natural Law Theory; John Finnis; Gender and Male Violence; Autonomy and Dignity; Decriminalization of Prostitution; Dignity Violation

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Nsona v Netherlands (application no. 23366/94)

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Price v United Kingdom (application no. 33394/96) (2002) 34 EHRR 53

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Roseline Godwin v Dr A.O Uzoigwe and Mrs F.N.A Uzoigwe 1992 WL 895724

Şeker v. Turkey (application no. 52390/99)

Smith and Grady v United Kingdom (2000) 29 E.H.R.R. 493

Soering v UK (application no.14038/88)

SW v United Kingdom; CR v United Kingdom (application no. 20166/92 (1996) 21 EHRR 363

T v United Kingdom (application no. 24724/94); V United Kingdom (application no. 24888/94)

Tanis v Turkey (application no. 65899/01)

Tarariyeva v Russia (application no. 4353/03)

The Queen (On the application of “E”) v Secretary of State for the Home Department [2012] EWHC 1927 (Admin)

The Republic of Ireland v The United Kingdom (1979-80) 2 EHRR 25

Timurtas v Turkey (application no. 23531/94)

Toğcu v. Turkey (application no. 27601/95)

Tomasi v France (application no. 12850/87)

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Ulke v Turkey (application no. 39437/98)

Valasinas v Lithuania (application no. 44558/98) [2001] prison LR 365

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Z v United Kingdom (application no. 29392/95)

International Cases

Bedford v Canada (Attorney General) [2010] ONSC 4264 (Ontario Superior Court of Justice)

Jordan v South Africa (2002) 13 BHRC 203

R v Butler [1992] 1 SCR 452 (Supreme Court Canada)

R v Mara (P.) et al [1997] 213 NR 41 (Canadian Cases)

R v Tremblay [1993] 2 SCR 932

Wackenheim v France, Conseil D'etat [Ce Ass.] Oct 27 1995, Rec Lebon 372 (Fr)

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Legislation of England and Wales

Criminal Justice Act 1988
Marriage (Same Sex Couples) Act 2013
Modern Slavery Act 2015
Sexual Offences Act 1956
Sexual offences Act 1985
Sexual Offences Act 2003

International Legal Instruments

Charter of the Spanish People 1945
Constitution of Finland 1919
Constitution of the German Reich 1919
Constitution of Ireland 1937
Constitution of the Republic of Cuba 1940
Political Constitution of the Portuguese Republic 1933
Political Constitution of the Republic of Costa Rica 1949
Political Constitution of the United Mexican States 1917 (amended 1946)
The German Basic Law

Treaties

Council Framework Decision on Combating Trafficking in Human Beings 2002 (2002 Framework Decision on Trafficking) (2002/629/JHA; OJ L 203/1)
Council of Europe Convention on Action against Trafficking in Human Beings and Its Explanatory Report (ETS 197)

European Convention on Human Rights and Fundamental Freedoms 1950;

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International Covenant on Economic, Social and Cultural Rights 1966

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (UNGA Res. 55/25)

South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution ('SAARC') 2002

The African Charter on Human and Peoples' Rights 1981

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PART ONE

1. INTRODUCTION

This thesis is a socio-legal study, adopting philosophical understandings of the concept of human dignity to approach the sociological issue of prostitution. The thesis is structured into four parts. Part 1 consists of this introduction and the methodology chapter, which will outline the methodological justifications and methods used. Part 2 will consist of chapters exploring the notions of dignity, its violation and how these might be legally recognised. From this, a descriptive model of dignity is constructed. Part 3 utilises the work of John Finnis to provide a possible normative framework for the model constructed, and part 4 reviews the literature within the academic discipline of the sociology of prostitution, before applying the dignity model as per the hypothesis question and concluding. The thesis is now explicated in further detail.

In recent months, research has been conducted which examines the apparent deleterious nature of prostitution on the (principally) female population who are engaged in it. This has led to political developments towards the criminalisation of the process of selling and/or purchasing sex.¹ It is this process which central to prostitution itself, and is the focal point of this study. It is termed 'the prostitution encounter' throughout the thesis. There have been recent moves by the UK Parliament to instigate policy which criminalises clients of prostitution. This approach is colloquially known as the 'Swedish' or 'Nordic' model, after the Swedish legislation introduced in 1999² which criminalises clients of prostitution, whilst making not criminalising the act of *selling* sex itself. Behind these measures and proposed legislation are influential reports which have indicated that prostitution and human trafficking, (which it is often conflated with), amount to serious violations of human dignity. This study considers one particularly relevant and influential European Parliament report, led by Mary Honeyball, Labour MEP, on behalf of the Committee on Women's Rights and Gender Equality.³ The report sets out concerns about prostitution, sexual exploitation and gender

¹ I.e. For official reports see APPG *Shifting the Burden* (2014) All-Party Parliamentary Group on Prostitution and the Global Sex Trade; Rhoda Grant, 'Criminalisation of the Purchase of Sex (Scotland) Bill (2)' (2012) Scottish Parliamentary Consultation Papers. For recent academic comment, see Jane Scoular, Anna Carline, 'A critical account of a 'creeping neo-abolitionism': Regulating prostitution in England and Wales' (2014) 14(5) *Criminology and Criminal Justice* 608; Sarah Kingston, Terry Thomas, 'The Anti-social Behaviour, Crime and Policing Act 2014: implications for sex workers and their clients' (2015) *Policing and Society* 1

² The Act on Violence Against Women 1999. Norway and Iceland also adopt similar legislative approaches to prostitution.

³ Mary Honeyball, *Report on sexual exploitation and prostitution and its impact on gender equality* (2013/2103(INI) European Parliament Report (3rd February 2014)

inequality. Its overarching recommendations are that there be a consensus among EU Member States that measures be adopted to tackle sexual exploitation through the criminalisation of the purchase of sex, aligning with the Swedish/Nordic model approach. It therefore recommends that policies direct towards the criminalisation of clients of prostitution. After its publication, a critique of the report was also published, with contributions from many esteemed sex work researchers, sociologists and sex workers.⁴

In particular, this thesis is concerned with parts of the so-called 'Honeyball' Report which identify a discernible relationship between prostitution and the somewhat undefined concept of human dignity. The preamble to the report provides that 'prostitution is a form of slavery incompatible with human dignity and international human rights',⁵ and further on, in the Explanatory Statement section of the report, the author writes: 'Prostitution is a very obvious and utterly appalling violation of human dignity...'.⁶ It is plain that the report suggests then, that both prostitution and sex trafficking together are harmful and violate the dignity of the women involved. Both the voluntary and involuntary sale of sexual services (both of which are difficult to define exactly) amount to a 'very obvious' and an 'utterly appalling' violation of human dignity. It is not difficult to see the problems that such statements raise. It is a theme which reflects the law's attempts to 'understand' prostitution - mainly based on a moral reflection on the purchase/sale of sex, which is evidenced in the use of overtly moral language in criminal offences which target acts ancillary to prostitution. Honeyball's report appears to align therefore with a traditional criminal legal stance towards prostitution in England and Wales. What then is the problem with the assertions made in the report?

It makes two assumptions which are very hard to quantify or prove/disprove. Firstly, by speaking of human dignity in this way, as a measure of the experiences of sex workers, the report assumes that human dignity exists, that it is appreciable by those involved in prostitution, and secondly, that prostitution *violates* that dignity in a particularly severe manner. These are problematic assumptions, because they are utilised to direct policy on the issue of prostitution. Policy is called to be enacted on the basis of an assertion that dignity is violated, without any systematic understanding of dignity being set out. It is perhaps unsurprising then that the report is controversial, and academic critique which followed the publishing of the report from very experienced researchers in the different

⁴ 'A Critique of the "Report on Prostitution and Sexual Exploitation and its Impact on Gender Equality" by Mary Honeyball, MEP
<http://www.nswp.org/sites/nswp.org/files/A%20Critique%20of%20the%20Report%20on%20Prostitution%20and%20Sexual%20Exploitation%20and%20its%20Impact%20on%20Gender%20Equality%20by%20Mary%20Honeyball%20MEP.pdf> accessed August 2015

⁵ Ibid 6

⁶ Ibid 15

academic disciplines is aimed at the alleged methodological deficiencies and accusations of bias on the part of the makers of the report.⁷ Leaving aside the problem of the report conflating the issues of prostitution and sex trafficking, which will not be explored here,⁸ the academic critique also suggests a distinct lack of objectivity, and critics have thus called for objectivity through an evidentially-based analysis of prostitution from which a proportionate legislative response can be determined. The critique does not necessarily focus ultimately on the inconsiderate use of the language of dignity, however.

This thesis suggest that the latter of the two statements from the report that are mentioned above, (which appears upon review of the entire report to underpin the author's reasoning throughout), presents some conceptual difficulties for those interested in the welfare of those working in prostitution, and those making very far-reaching decisions about the regulation of the issue. It is in part to a call for objectivity over the issue of regulating, criminalising or decriminalising prostitution that this thesis has been targeted, with a focus on the issue of prostitution and human dignity therein. Objectivity is not necessarily possible where the language of dignity is undefined, within specific normative boundaries. And so, it is here asserted that where the language of dignity is used the concept 'dignity' must be adequately modelled if it is going to be used as a measure by which the normative rights or wrongs of a particular course of action, such as the prostitution encounter, can be discerned.

But what *is* dignity, and why utilise it to measure the rights or wrongs of prostitution? The unfettered use of the term seems to be abundant in modern society. Apparently there is dignity in dying, dignity in speech, dignity in sexual orientation, dignity in abortion or in religious belief. It is arguably a well-worn term. As this study will indicate, it has historical, philosophical, religious and legal implications as a concept or a cluster of concepts. What is meant when we speak of dignity can therefore be a mixture of potential sub-concepts with perhaps conflicting normative meanings. Dignity might be understood commonly as a value or a virtue, present *in*, or bestowed *upon* humanity. It may be to do with respect or honour. It may also be the philosophical grounding for the existence of various rights and/or obligations. It is due to the fact that when we speak of dignity we may be speaking of different ideas under the same heading that there exists such a problem with the language of

⁷ Ibid; '[the Report is] based largely on inaccurate and/or misrepresentative data. The sources cited are either studies which have been discredited, or are selected to relate to specific circumstances which do not reflect the experiences of many people working as sex workers. Nor does the Report consider the extensive evidence from peer-reviewed academic studies demonstrating the problems associated with the model proposed.' The report also conflates forced and voluntary prostitution, which is an issue that is discussed later in Chapters 10.

⁸ The reader is directed to the work of Jo Doezema and others who examine this conflation and determine it to be detrimental to resolving the substantive issues affecting the women involved. See J Doezema, 'Ouch! Western Feminists' 'Wounded Attachment' to the 'Third World Prostitute' (2001) 67 Feminist Review 16

dignity used in the Honeyball Report to condemn prostitution. Dignity is not necessarily one distinct concept which can be used as a definitive normative yardstick.

This might lead us to right off the report completely, convinced that its comments have no authority, or no objective standing. But what if human dignity was in fact modelled, based around the conceptions of dignity presented in the literature and the law, and what if that model of dignity could be framed in a normative way, so as to provide a call to action which demanded its preservation, protection or perhaps even its promotion? If dignity were modelled in such a way, the report might be given sufficient objective weight to allow it make a more measured analysis of prostitution. If the report's ultimate aim is to protect the welfare of sex workers, this would be an arguably useful effort. This thesis takes on this task, under the hypothesis question: 'Does prostitution violate human dignity?'

In order to address this question, the thesis models human dignity in a way that it can be used to determine dignity violation in prostitution. First, then the study must model human dignity, and secondly, produce a sound understanding of the complex subject matter of prostitution from the sociological academic discipline, and apply the model to it. The approach used to address the hypothesis question is now explained.

This thesis considers that human dignity should be fleshed out more clearly by forming a 'model' of dignity based upon a review of the literature in law, philosophy and the social sciences. The model which is constructed in this thesis is based upon three core 'themes' of dignity recognised in the law and the wider literature which frequently arise, and therefore, as a kind of lexicography of dignity, present human dignity as it is perhaps most widely understood. It does so with some caution. For instance, this study does not 'essentialise' the concept of dignity, so that it is not seeking to say exactly what dignity *is*. To do so is perhaps not possible, or runs the risk of being too prescriptive.⁹ Equally, dignity is not reduced to similar terms, such as 'equality', 'honour' and so on. To do that would be to prevent dignity from having its own presence altogether. As will be seen later, some scholars have attempted to deal with dignity in both ways, without providing much clarity. Instead, this thesis adopts an approach akin to Leslie Meltzer Henry, which considers dignity using a Wittgensteinian method, and examines the family resemblances of the language used to describe dignity and to apply it – in her case within a judicial context vis-à-vis judgments of the US Supreme Court. Thus, in this study, a model is adopted which is based upon three ascertained themes of dignity (which it is acknowledged are in themselves open to theorisation).

⁹ This is an approach adopted by, inter alia Christopher McCrudden in C McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655

Firstly, human dignity is identified as inherent and inalienable, operating as the bedrock of a normative framework of human rights. Dignity is also recognised as two additional elements, which are autonomy and personal inviolability. A person utilises autonomy by determining in their own mind the direction in which they wish to steer their life. And that person, by virtue of their inherent dignity is personally inviolable, that is, they must not be violated against their will. The possession of both autonomy and personal inviolability provide a kind of *ratio essendi* for the existence of inherent human dignity. This will be explored in detail in part 2 of the thesis, where this descriptive model will be constructed. The model which is constructed is called 'IPA dignity', named after the three themes which make up its constituent elements.

It might reasonably be said that there exist two possible alternative positions in relation to their human dignity. The first position is that the person has their human dignity *respected*, *promoted* or *preserved*. We should explore these in turn. To *respect* one's dignity is to recognise it, and to appreciate it. To respect one's dignity is to show regard to it, to admire it and to wish it to be so regarded by others also. To *promote* one's dignity is to go a step further, and to actively advocate for the benefit of the person and their dignity. To *preserve* one's dignity is to take some protective measure to ensure it is not negatively impacted upon. The second position involves the negative impact that can be had on a person's human dignity. The term used for this is *violation*. Dignity as it stands as inherent cannot be diminished, or removed from a person. But dignity can be violated – that is by some specific *measure* taken, *activity* towards or *treatment* of an individual which results in their autonomy being denied them, or their personal inviolability being diminished. The study explores this second position with an analysis of dignity violation from a sociological and also a judicial perspective, the latter by considering the jurisprudence of the European Court of Human Rights pertaining to Article 3 of the European Convention on Human Rights (ECHR). By doing this, the thesis builds upon the descriptive analysis of human dignity presented in the IPA model, to consider how that dignity may be violated, and what sociological and judicial language is used to determine such a violation. Various modes of dignity violation are presented.

At this stage the IPA model is constructed to give us a clear understanding of the core themes of dignity, so we can better understand it as a concept. However, there is a problem if we now want to continue to address the hypothesis question. The problem surrounds the descriptive, rather than normative nature of the IPA dignity model which is constructed. It will not do to examine the issue of the prostitution encounter using a descriptive model, if we are seeking to apply human dignity as an objective form of normative yardstick to the prostitution encounter as Honeyball and others seek to do. This is so even if that descriptive model is couched in normative language. That is to say, even if prostitution is claimed to violate

human dignity, what normative reference do we use to account for how dignity *is* actually violated and, from this, offer a principled objective reason and direction for the law's engagement with prostitution? It is one thing to explain that dignity may be inherent, and be represented as autonomy and personal inviolability, and yet another to suggest that because of this we *ought* to preserve, protect, respect or otherwise not negatively impact upon it. We can state how dignity is understood and applied (descriptive analysis) and then we also consider and suggest what dignity – or more appropriately its promotion, protection, respect etc. *ought* to be (normative analysis).

The question then arises – what is a suitable normative framework for IPA dignity that the law can engage with? Public opinion or perceptions of the rights and wrongs of prostitution provide one perspective but are naturally prone to the weaknesses of subjectivism, as the critics of Honeyball point out. A proposed answer to this question that can provide an objective basis for normative evaluation lies in the epistemological framework of this study, which is based in natural law theory. Natural law theory essentially ties together two things: the 'is' to the 'ought'. It does this by insisting that there are identifiable intrinsic values or 'goods' that we, as rational beings, and the law as a construction should recognise and reflect. This study utilises a natural law approach to indicate what sort of goods might be being affected in the prostitution encounter and how these relate to an overall objective of ensuring and promoting human flourishing. It is this notion of human flourishing that grounds the normative call for action. This idea of human flourishing is akin to human dignity, since it is essentially about the promotion or and positive action towards a life which is full, successful and fulfilling. The most influential theory of the past century on practical reason to promote human flourishing in the natural law theory school is arguably that of John Finnis. In his 1980 (and 2011 postscript) seminal work, *Natural Law and Natural Rights* Finnis sets out seven objective goods – that is 'goods' which all human agents would objectively seek after to achieve the cumulative effect of 'human flourishing'. The way in which we might achieve any or all of these goods is through the use of practical reasonableness. The use of practical reasonableness to promote the objective goods is deemed to be an objectively moral course of action. Finnis holds that a morally right course of action is not necessarily one which is inherently 'good'; instead, we act morally when we pursue the objective goods through a practically reasonable course of action. It follows that a course of action which offends the objective goods because it is practically unreasonable, will be an immoral course of action.

How does this relate to the dignity as I have presented it here to be a foundational concept for all humanity? There needs to be an establishment of a link between the preservation and even promotion of human dignity and a course of moral action which results in human flourishing (i.e. with Finnis, a practically reasonable course of action which promotes (and

therefore does not offend) the objective goods). This link is established by exploring IPA dignity. Dignity is inherent – seemingly beyond reasonable dispute, and that inherent dignity is presented and exhibited through the exercise of autonomy and personal inviolability. The elements of the IPA model can be linked to the objective goods of Finnis. The preservation or promotion of those goods, accordingly with an exercise of practical reasonableness, is the normative framework which acts as the ‘call to action’ to preserve, promote and respect human dignity.

Thus far we have set out the three elements of IPA dignity in a descriptive analysis. Then, we have married a normative theory by John Finnis to the IPA model. We can now see that dignity may be respected, promoted or preserved, as per the first position above, or it may be violated, as per the second position. Now we must continue to state why the first position is brought about by morally correct action, and the second position is brought about by morally incorrect action. Why is it morally right to respect, promote or preserve IPA dignity, and not morally right to violate it? This is where we must turn to practical reasonableness and the objective goods. Measures, activity or treatment which violates inherent dignity through either autonomy or personal inviolability, are not practically reasonable courses of action. They do not promote human flourishing, and thus are, according to Finnis, immoral. Thus, to violate human dignity, as constituted in IPA dignity is immoral, and we have ascribed normative value to the model. This will conclude part 3.

Part 4 will apply the IPA dignity model to the prostitution encounter in order to address the hypothesis question. It will do so by asking specifically, does the central prostitution encounter violate dignity, as is asserted by Honeyball et al? In order to apply the model however, some concrete features of the prostitution encounter need to be shown. The issue of prostitution might be approached academically in criminology, although this focuses on the criminal aspects of prostitution, as opposed to the sociological, which are ultimately far wider in scope. Therefore the thesis examines the sociology of prostitution in order to highlight the prostitution encounter within. A thorough review of the sociology of prostitution is presented, and various ‘explanatory models’ are identified within that academic discipline. Of the models which explain prostitution in sociology, the Gender and Male Violence (GMV) Model is considered to be the most suited to the instant study. The Honeyball report certainly takes from the GMV model, which as will be explained, represents sharply divided views for and against prostitution. The GMV model is also adopted in this thesis because its literature apparently represents the clearest focus on the prostitution encounter, which, as mentioned, is the central issue to consider in the analysis. The literature is reviewed, and narratives of sex workers are acknowledged which provide insight into their experiences.

Once the sociology of prostitution has been reviewed, the application section of the thesis applies the normative IPA dignity model to the prostitution encounter. In order to do this, the thesis adopts a phenomenological approach to consider the narratives of sex workers from seminal studies which involve interviews with sex workers from different backgrounds and markets of prostitution. The analysis considers the language used in the narratives, and identifies language which appears to align with modes of dignity violation which are discussed in the latter part of the first half. Where language is used in the narratives which align with modes of dignity violation, it is asserted that human dignity, as modelled in IPA, is violated in the experiences of those narrating. This leads to a conclusion as to the hypothesis question, and the wider relevance of the study. This thesis provides an original contribution to knowledge in the fields of law, legal theory and sociology by providing therefore a novel 'lens' through which prostitution can be viewed, and it is also intended that it will spark academic interest in examining the dignity of human beings in socio-legal issues beyond prostitution. This introduction has considered the Honeyball report as potentially unhelpful in the pursuit of the promotion of welfare of those in prostitution. The ensuing study provides an analysis and application which examines the strong claims made to help the reader make a more informed decision as to whether prostitution really is an utterly appalling violation of human dignity, or not.

2. METHODOLOGY, OBJECTIVES AND SCOPE

This chapter sets out and justifies the methodologies used in this thesis, and also identifies issues that the study of the sociology of prostitution raises. The sex worker-client exchange of sexual services, is introduced and referred to as ‘the prostitution encounter’ throughout. This chapter identifies the present gaps in knowledge, the substantive original contribution to knowledge, and establishes the scope and objectives of the study.

This will be a cross-disciplinary study. It combines sociological study with jurisprudence, and constructs descriptive and normative models by which an essential issue located in the sociology of prostitution is assessed to address the hypothesis question; does prostitution violate human dignity?

Original Contributions to Knowledge

Upon review of the literature, various broad concepts of human dignity are identified, but few legal models of dignity. Whilst some legal models of dignity, which are presented in Chapter 6, have been recently constructed, they are only descriptive and do not necessarily demonstrate the pragmatic application of a model of dignity, to, for example a social problem such as prostitution. Equally, the literature in the law and sociology of prostitution demonstrates that the law has traditionally understood prostitution through a criminological lens, centred on the usage of moral language - the law has approached prostitution by seeking to control it through criminalisation of the prostitution encounter and various ancillary acts. To date, prostitution has not been considered vis-a-vis the human dignity of the sex worker in the prostitution encounter in socio-legal research. The Honeyball report demands that an analysis be pursued which considers why prostitution is wrong from a human dignity perspective. If it violates human dignity, why is that ‘wrong’?

As will become clear, it is problematic that a specific legal understanding of dignity is not agreed, especially since human dignity is a foundational concept underpinning international law. Chapter 4 outlines how much substantive international human rights law uses the language of dignity. Although some academics have claimed it *cannot* be a legal concept, this thesis will propound that a model of dignity *can* be formed which can then be presented as a framework for individual dignity, which may be violated.

Some attempts to create descriptive models of human dignity have been conducted in the USA, and, in Chapter 6 reference is made to their work. In particular, the esteemed work of

Leslie Meltzer Henry is considered in forming the IPA model of this study, albeit with some key distinctions. The incompatibility of collective dignity with inherent dignity separates Henry's model from that constructed here. The study then extends beyond the work of Henry et al, to consider the violation of dignity. This study provides an original contribution to the literature in human dignity and prostitution, by modelling human dignity descriptively, and then framing it around a normative expression of human flourishing according to John Finnis to apply it to the social issue of prostitution and determine if prostitution violates human dignity according to the IPA model.

The study is of further originality through the means by which the hypothesis is addressed; to indicate the potential violation of dignity by prostitution, using the IPA model constructed. The violation of human dignity according to the IPA model will be considered using taxonomy of dignity violation, and considering various, 'modes of dignity violation'.

The application will involve the consideration of the research and narratives from the literature in the sociology of prostitution, from within a particular explanatory model, and identifying dignity violation from that material using a phenomenological analysis. The dignity violation will relate to IPA in accordance with the methods of Finnis, and will lead to conclusions as to whether, in the sample used, prostitution may violate human dignity. Utilising the methods explicated in the remainder of this chapter, this thesis contributes to knowledge in socio-legal studies and the legal theory of human dignity.

Research Scope and Objectives

This section will define and justify the scope of the study in the two key areas of research for this thesis; human dignity and the sociology of prostitution.

Human Dignity

The study of human dignity is highly fragmented.¹⁰ As such, this thesis will approach it firstly from an analysis of the literature to ascertain what the recurring themes of dignity are from the modern, quasi-legal literature, consider international legal reference to dignity and then construct a descriptive model of dignity. I present the concept firstly as it presents itself in essentially non-legal and quasi concepts, to locate it in the key disciplines, before moving to a legal discussion of human dignity in international human rights law. Following this, an

¹⁰ There are numerous approaches, and numerous eras in which the concept could be studied. For instance, one might consider entirely an approach based on a Roman understanding of dignity.

explication of recently constructed models of dignity will lead into the construction of the IPA model as distinct from these. One of the central objectives of this part of the thesis is to identify dignity, and reinforce the claim that it has legal utility. Thus the emphasis is on justifying the legalisation of dignity, by demonstrating inter alia that human dignity is fundamental in international law. Through a review of the quasi-legal perspectives of human dignity, seminal works were identified. Some of these will be referred to now.

Kretzmer and Klein's 2002 work¹¹ contains a number of separate chapters detailing conceptualisation of dignity within a human rights framework. It was deemed relevant to this study, since contributors in Kretzmer and Klein consider dignity from a quasi-legal, philosophical and theological perspective. It is a text which is cited in many other works, and paints a broad picture of human dignity, its recognition through humiliation, its utility as a concept and its purpose. Beyleveld and Brownsword's 2001 work¹² is also frequently referred to in many articles on dignity, including the work of Christopher McCrudden, which plays a significant part in the modelling of IPA dignity.¹³ Their work represents a leading authority in the determination of concepts of human dignity, particularly in the field of bioethics, but, importantly for this study, in the consideration of dignity as it relates to autonomy. From a perspective of politico-legal science and philosophy, George Kateb's 2011 work, which chronicles human dignity and human nature and characteristics was reviewed.¹⁴ This work presented a further deviation on the conceptualisation of dignity, and provided further ideas for the production of a model of dignity later on. Furthermore, the concepts of human nature and characteristics are embedded in the study of dehumanization, as propounded principally by Nick Haslam.¹⁵ Other key texts were also reviewed.¹⁶

Aside from the limitations and scope set out here, it is pertinent to indicate the limitations of the ensuing review of the literature on human dignity. The research for this thesis was divided into two halves, one in human dignity and the other in the sociology of prostitution,

¹¹ David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002)

¹² Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001)

¹³ Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655

¹⁴ George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011)

¹⁵ For example, Nick Haslam, 'Dehumanization: An Integrative Review' (2006) 10(3) *Personality and Social Psychology Review* 252

¹⁶ Charles Foster, *Human Dignity in Bioethics and Law* (Hart: Oxford and Portland, Oregon 2011); Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014); Christopher McCrudden (ed), *Understanding Human Dignity* (OUP 2013)

with equal research devoted to each. As such, and due to the multitude of ideas and philosophical, political, ethical and anthropological ideals of human dignity, it was not possible to chronicle the entire literature. For the purposes of this study, neither was an exhaustive review of the literature on dignity necessary to construct a model of dignity. Instead, four agreed themes of dignity in the literature have been identified across the key texts and articles. These are the subject of concern in the ensuing chapters.

The Sociology of Prostitution

This study considers prostitution only through the academic discipline of sociology. It will not consider the myriad of other disciplines in which the issue of prostitution lies, such as criminology or anthropology, for example.¹⁷

In respect of the literature reviewed, it is restricted to female prostitution. Although it is documented that there are a large number of male sex workers, the main body of academic literature pertaining to prostitution, the sale of sexual services and violence in prostitution relates predominantly to female prostitution and female sex workers. It is recognised that the issues discussed in this study relate to both sexes, but to focus the study on male prostitution would be problematic, in that the volume of material dedicated to the study of male prostitution is much smaller, and more specialised.¹⁸ Equally, child prostitution is not specifically considered, although, once again, child prostitution, (male and female), is a large problem in the United Kingdom, because the voluntary nature of adult male or female prostitution is removed with child prostitution.

Various explanatory models will be acknowledged, and from these models, one particular model, the Gender and Male Violence (GMV) model will be adopted. The GMV model informs the ensuing study vis-à-vis 'prostitution', so interpretations of what prostitution is, and how it operates are informed specifically and exclusively by literature which conforms to the ideals of this model.¹⁹ The key issue which will be assessed in accordance with IPA dignity later in the study will be the exchange of sexual services, termed 'the prostitution encounter'. Other factors in prostitution, as will be identified in the sociology of prostitution,

¹⁷ There are many academic disciplines that consider prostitution as a quasi-sociological issue. See Chapter 11 which refers to other material in this respect. A sociological discipline was chosen principally as this is a socio-legal study, which is explained in this chapter.

¹⁸ For example, the material in male prostitution tends to explore HIV/AIDS and related issues, which go beyond the scope of this study. Equally, transgender prostitution is not considered in this research.

¹⁹ In Chapter 11, where this model is examined and its use justified in further detail, it will be seen that the decision to use this model exclusively finds support in its inherently balanced position; its acceptance of views for and against prostitution.

will not be considered according to IPA dignity as they exceed the constraints of this thesis. These include physical and psychological health and wellbeing,²⁰ and labour rights of the sex worker.

Referencing System

The Oxford University Standard for the Citation of Legal Authorities (OSCOLA) referencing system is used throughout. It is the principal legal referencing system in academic institutions in the United Kingdom. Consideration was given to the use of the Harvard referencing system, however, whilst it is acknowledged that most sociological studies adopt that particular system, OSCOLA is the referencing system in which I am most proficient and is certainly appropriate for a socio-legal study of this nature.

Jurisdictional Discussion

There are two jurisdictional concerns in this thesis – that of the legal aspect and that of the sociological aspect. The sociological aspect of the study will essentially be situated within the United Kingdom. Whilst there is clearly no ‘jurisdiction’ on the subject of prostitution, the prostitution-orientated sociological literature reviewed is predominantly UK based, with empirical studies conducted in cities in the UK. Some of the material reviewed relates to data collected from sex workers outside of this jurisdiction, such as France and the USA.²¹ Some appropriate references are made to other jurisdictions, including Canada.

The common law and statutes of England and Wales, in as much as they apply to domestic criminal and civil law will be considered in the thesis. European Union law and international conventions will be addressed as to the extent to which they apply to the United Kingdom as a Member State of the European Union, or as they might affect policy on prostitution in any state. The thesis will also refer to cases of other jurisdictions as appropriate. Whilst not a comparative study, the thesis will consider common law cases that are relevant to the hypothesis.

The study relies on judgments of the European Court of Human Rights in Strasbourg (ECtHR) because it is an internationally recognised judicial body, and its international standing also complements this study’s consideration of the universal nature of prostitution.

²⁰ Including also sexual health, not considered in this study. A review of the literature in this area reveals a quantity of research on male prostitution centring on the issue of HIV/Aids in male sex work.

²¹ See Appendix C

In interpreting the ECHR Articles, this study uses purposive and teleological approaches of interpretation, commonly used in civil law jurisdictions, and adopted by the European Union in its drafting of legislation.²²

Methodological Discussion

Throughout this discussion on methodology, I have made reference to the well-respected texts on research methods and strategies, by Martyn Denscombe.²³

This study will use a mixed-methods approach, and will be a qualitative, socio-legal study of the quasi-legal concepts of human dignity and human rights law as they relate to the institution of prostitution. In contrast, a quantitative approach is usually utilized for larger groups of numerical data than those employed in this study. Qualitative methods are generally used where a study is less based in obtaining and analysing vast swathes of numerical data, but has an approach lending itself to a more theoretical, philosophical angle.

In this study, qualitative methods appear the most appropriate given that these consider issues, (be they social or human), from a variety of perspectives, whereas a quantitative methodology would analyse data-sets and rely heavily on numerical data, statistics etc. In support of this assertion, this thesis examines the socio-legal issues surrounding prostitution, and, whilst it is at times helpful to refer to numerical data to give an overall picture of the issue and its magnitude, the thrust of this thesis is towards a more theoretical legal approach.

Ontological Context - Natural Legal Theory and John Finnis

In a legal study it is important to set out the perspective through which law is understood. There are many legal theories, but two central theories underpin our understanding of the law and its purpose; natural legal theory and legal positivism. This study will be based upon a natural law epistemology. Natural law theory may be said to 'provide a name for the point of intersection between law and morals.'²⁴ As such a natural legal epistemology is particularly appropriate to consideration of the concept of human dignity if it is to be used as a practical foundational legal/moral concept.

²² For further explanation of these approaches to interpretation, see Gary Slapper, David Kelly, *The English Legal System: Fourteenth Edition 2013-14* (14th edn Routledge 2013) 97

²³ Martyn Denscombe, *The Good Research Guide* (4th edn Open University Press 2010); *The Good Research Guide* (5th edn Open University Press 2014)

²⁴ Raymond Wacks, *Understanding Jurisprudence* (4th edn OUP 2015) 14

Natural legal theory has been said to consist of an attempt to resolve the tension between that which 'is' and that which 'ought' so to be.²⁵ Says Wacks, its 'principal claim, put simply is that what naturally *is*, *ought* to be'.²⁶ This is a theme enunciated historically by John Locke, who says that 'the State of Nature has a Law of Nature to govern it, which obliges every one'.²⁷ Natural law is based on an essence of law which is not created by man, but exists in spite of him. One of the most famous natural legal philosophers was Saint Thomas Aquinas, who wrote the seminal *Summa Theologiae* in the fifteenth century. Aquinas identifies four categories of law, in descending hierarchy as *Lex Aeterna* (eternal law); *Lex Naturalis* (natural law); *Lex divina* (divine law) and finally *Lex humana* (humanly posited law). Natural law, says Aquinas is derived from the eternal law, as God's plan for the universe – his reason beyond human knowledge and understanding. Says Aquinas, we are bound to follow what comes natural to us, in a knowledge of what is necessarily 'good', because we are naturally aware of what is good, and what is not. Natural law theory according to Aquinas is therefore based upon the premise that law is designed on the basis of a God-given universal morality that motivates us to act, and also to legislate.²⁸

The natural law therefore binds us as human beings, since we are guided towards them by human nature, and they 'point us toward the good, as well as to certain specific goods...These principles are known to us by virtue of our nature'.²⁹ Aquinas provides us with an example of natural legal thought based on religious belief, but Finnis adopts an approach which is not founded in a religious belief per se. For Finnis, religion is an objective good, only in-so-much as it is important for human flourishing that human agents have the option of choosing whether or not to believe in a deity. Finnis examines moral thought towards human flourishing from a point of moral realism, so that morality exists outside of the mind of the individual. For Finnis, what is the right thing to do is not based on a God-given objective or mandate, but it is that which leads the individual towards human flourishing through practical reasonableness.

In this study, a model of dignity is developed from the literature as a descriptive model of dignity. In this sense, the thesis begins by developing a model of dignity which declares what it 'is' or what it appears inductively speaking to be from the literature, based on core themes of dignity therein. However, the hypothesis question of this work demands that the issue of dignity as it may or may not be violated by prostitution, represented in the prostitution encounter according to the Gender and Male Violence Model, is adequately dealt with to

²⁵ *ibid* 14ff

²⁶ *Ibid*

²⁷ John Locke *Two Treatises of Government* (1680-90) 271

²⁸ In contrast, Legal positivism instead dictates that law is not the child of morality or moral reasoning, but legal positivists state that law is realised from sovereign authority.

²⁹ *Ibid* 17

produce some conclusion in reference to the Honeyball report's concerns. In order to conduct this analysis, it must be established what a dignity violation is. A model of dignity which simply indicates how dignity has been understood and even applied does not, in and of itself, provide an adequate account of what might constitute its violation due to a lack of the normative grounds on which to base an objective evaluation. Moreover, it has the potential to clash with such a normative consideration. As such, the model of dignity is approached in two ways, firstly by considering the 'is' descriptive and modelling dignity as IPA in the chapters that follow in Part 2. Then, in Part 3, a normative grounding is offered by reference to the normative framework of practical reasonableness, per Finnis. Natural legal thought in the school of Finnis is therefore utilised in this thesis to provide the normative framework for IPA dignity.

Interpretation of Language

The interpretation of language is specifically relevant to the modelling of human dignity into the IPA model, and in determining modes of dignity violation in Chapter 8. Ludwig Wittgenstein's interpretive method of considering words and concepts as being part of a particular family with certain 'family resemblances' will be utilized in considering the concept of human dignity and how it is violated, and then in the application with phenomenological analysis of sex worker narratives. For example, a family of words relating to the word 'violation' might consist of 'breach', 'diminishment', 'demeaning' and so on.

As such, in line with Leslie Meltzer Henry's methods for formulating a model of dignity,³⁰ the model produced for the purposes of this thesis will be neither reductionist, nor essentialist in its approach to the naturally ambiguous concept of human dignity. This will enable the model to be more fluid and non-permanent, allowing for diverse, context-specific applicability and flexibility when applied to complex sociological issues such as prostitution.

Socio-legal research

This section will set out the meanings of 'socio-legal' research, a term which is referred to throughout this thesis. The term 'socio-legal' is difficult to define. As the former director of Oxford University's Socio-legal Centre stated; '[T]here is no agreed definition of socio-legal studies: some use the term broadly to cover the study of law in its social context... [or] to the study of the law and legal institutions from the perspectives of the social sciences'.³¹ For the

³⁰ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169

³¹ D Harris, 'The Development of Socio-Legal Studies in the United Kingdom' (1983) 2 Legal Studies 315

interrelation between sociology and law, which is too great a digression to be examined here, see Luhmann, who presents a thorough review of the classical underpinnings of the sociology of law.³² Alan Bradshaw provides a useful further description of socio legal research:

Socio-legal research takes legal study outside the legal 'office', with office used broadly in its multiple senses. First, socio-legal research considers the law and the process of law (law-making, legal procedure) beyond legal texts – i.e. the socio-politico-economic considerations that surround and inform the enactment of laws, the operation of procedure, and the results of the passage and enforcement of laws. Second, in studying the context and results in law, socio-legal research moves beyond the academic, the judicial and the legislative office, chamber, library and committee room to gather data wherever appropriate to the problem. In summary, in both topic and locus of study, socio-legal research moves beyond legal text to investigate law-in-society.³³

Firstly, *sociology* is defined in the Oxford English Dictionary as 'the study of the development, structure and functioning of human society'. It might be proposed that an application of legal study to the sociological results in socio-legal study. It is perhaps, the study of law 'in context' – examining law as it sits within the society it regulates. In recognition of cultural relativism, socio-legal studies will differ dependent upon the society at the centre of the study.

Socio-legal research explores the impact of the law in the social context. The social context is very important therefore to the research for this thesis. In the ensuing study, data is gathered from wherever appropriate to the issue, as Bradshaw provides above. Research will be conducted by means of an examination of existing literature, and documentary analysis of books, journal articles, case law, government reports, working papers and newspaper articles, websites and webpages. To summarise, therefore, in the ensuing piece of research, the reader will identify that the study considers how the law impacts upon, and how it might be beneficial towards, a sociological issue or issues. The conclusion to this thesis explains that there are further explorations to be made using the IPA model of dignity.

³² Niklas Luhmann, *A Sociological Theory of Law* (Routledge & Kegan Paul 1985) 9

³³ Alan Bradshaw, 'Sense and Sensibility: Debates and Developments in Socio-Legal Research Methods', in P Thomas (ed), *Socio-Legal Studies* (Dartmouth 1997) 99

Limitations of the Sociological Element

In spite of the discussion above regarding socio-legal research, it is important to note that this study is not purely a sociological one. The key aims of this study are to consider a new legal approach to an existing sociological issue. As such, whilst prostitution is examined and the principal issues expounded, it is not the sole intention of this study to present a critical analysis of prostitution as a social issue, but to assess the prostitution encounter as a central issue of prostitution with the IPA dignity model and seek to provide an answer to the hypothesis. This study is one of inter alia jurisprudence, exploring the sociological issues through a 'natural law' lens. Also, the study will not extend to pure psychological, anthropological or criminological analysis, because to do so would be too great a task for one thesis to adequately and efficiently address.

Comparative Studies

The study considers various legal models of dignity developed by scholars of US constitutional law. This decision is made on the basis that, at the time of conducting research for this thesis, these were the prominent legal models of dignity in the literature. Also, in part 4 of the thesis, occasional reference is made to a Canadian constitutional case which considered the laws surrounding prohibition of prostitution or ancillary acts.³⁴ The United States and Canada are both common law jurisdictions with similar 'juristic styles' to England and Wales.³⁵ In order to classify a legal system, Zweigert and Kotz recommend that a number of considerations should be made.³⁶ Firstly, the historical background and development of the system is important. The US, Canada and England and Wales share common law jurisdictional legal systems, 'wherein a large body of rules founded on an unwritten customary law evolved and developed throughout the centuries with pragmatism, strong monarchs, and unwritten constitution and centralised courts being [their] typical features'.³⁷ These jurisdictions also share characteristic (typical) modes of thought; 'Common lawyers think in terms of the parties and their particular legal relationship'.³⁸

All three share distinctive institutions, with parliamentary institutions, appeal court systems and a supreme court of appeal. Also they share types of legal sources and treatment

³⁴ *Bedford v Canada (Attorney General)* [2010] ONSC 4264 (Ontario Superior Court of Justice)

³⁵ Konrad Zweigert, Hein Kötz, *An Introduction to Comparative Law* (North Holland 1997)

³⁶ As quoted in Peter De Cruz, *Comparative Law in a Changing World* (3rd edn Routledge-Cavendish 2007) 38

³⁷ *Ibid*

³⁸ *Ibid* 38-39

thereof. They share similar ideology; for example, in respect of human rights, the Canadian Charter of Fundamental Freedoms is akin to the Human Rights Act 1998 of England and Wales. Therefore, in acknowledgement of the comparisons between England and Wales, the US and Canada as democratic societies sharing common law jurisdictions, and law reporting conventions, there appears to be no clear reason why these cannot reasonably be compared.³⁹

Documentary Analysis

When analysing documents, Denscombe suggests that four criteria are used to evaluate the documents reviewed. I have included Denscombe's suggested criteria verbatim, as follows:

i. Authenticity

Test the authenticity of the document – is it genuine? Has it been forged etc.?

ii. Representativeness

Is the document typical of its type? Does it represent a typical instance of the thing it portrays? Is the document complete? Has it been edited? Is the extract treated 'in context'?

iii. Meaning

Is the meaning of the words clear and unambiguous? Are there hidden meanings? Does the document contain argot and subtle codes? Are there meanings which involve 'what's left unsaid' or 'reading between the lines'?

iv. Credibility

Is it accurate? Is it free from bias and errors? This will depend on factors like:

- What *purpose* was the document written for?
- *Who produced the document?* What was the status of the author and did he or she have a particular belief or persuasion that would colour the version of things?
- If it reports on events, *was it a first-hand report* directly witnessed by the author? How long after the event was the document written?

³⁹ Save for obvious differences, such as federal governance in the US and Canada, which will be identified if and when necessary.

- *When was the document produced? In what social context and climate?*⁴⁰

Types of Document

It is now necessary to consider the types of documentary evidence used in this thesis, with reference to these suggested criteria.

Books –

In the sociological aspect of the thesis, a number of seminal sources have been chosen to provide narratives from former and current (at the time of the source's production) sex workers and clients. The account sources are predominantly books containing collections of accounts, gathered through empirical research. Any known bias is highlighted, but as a general point, much of the narrative data is produced by female sex workers who profess to have feminist viewpoints. There is a mix of eras, geographical sources and known bias. The eras and decades are not imperative to the proving or disproving of the thesis, but drawing attention to them will enable the reader to take into account relevant socio-political factors at the time and in the place the sex worker was working.

Journal articles -

Typically, journal articles will have been peer reviewed prior to entry into the official journal, and therefore, their authenticity will be less challengeable. Equally, the representativeness of journal articles will not likely be in issue. Where an article has been edited, reference is made in the citation to the document. There are three main types of article used; legal, philosophical and sociological articles. Legal articles are least likely to have hidden meanings, codes or ambiguity in the form of the document. Legal scholarship is principally concerned with the interpretation of language, yet legal articles imply and seek legal certainty, since the discipline of legal writing is consistent with certainty and concise writing.

Philosophical articles are much harder to categorize as such and must be judged on an individual basis under stricter scrutiny, since the nature of philosophical theory is that there are few boundaries, and multiple interpretations. Sociological articles used in this study are

⁴⁰ Taken from Martin Denscombe *The Good Research Guide* (5th edn Open University Press 2014) 221-222

frequently a combination of quantitative and qualitative research, with much empirical data used and interpreted within.

The authenticity of all articles is verified by obtaining all articles through established databases such as Sage, Taylor Francis, Westlaw and Lexislibrary, all of which scrutinize their own content before it is available publicly or to subscribers. With sociological articles, meaning is more certain, and less ambiguous. Feminist sociological/legal articles are clearly based in feminist epistemology, and are overtly or subtly so. In evaluation of articles, where they may be weighted towards a feminist epistemology, I account for this.

In judging the credibility of articles of the type I review, context is very important. No article should be read out of context, and my suggestion is that context consists of: the time/age in which it was written; the state it/its writer originates from; the prevailing political climate; recent major historic and legal events (i.e. 9/11; abolition of homosexuality prohibition etc.). Therefore each article is reviewed having had regard to the criteria stated.

Case Law and Legislation

Case-law and legislation was researched using a combination of online legal databases, but predominantly using Westlaw, Lexis Library and the European Court of Human Rights' own database; HUDOC⁴¹.

Working Papers and Theses-

Working papers and theses are more problematic in that they have not been peer-reviewed and so are open to scrutiny. Where reference is made to working papers or theses throughout this study, appropriate weight should be given to the evidential value of those documents. Working papers and theses will not form the sole basis of any substantive assertions made, unless they can be verified with further documentary evidence. *Meaning* is generally unambiguous because working papers tend to be in plain terminology, with a degree of certainty and clarity. As stated, context is very important in the review of working papers, particularly the state/s from which the work was/is being generated.

⁴¹ <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#> accessed on 9th, 10th and 11th September 2013

Interviews

Interviews have not been carried out specifically for this study, for two reasons: firstly because they have been deemed unnecessary for the purposes of this particular thesis, since recent, existing information is readily available. Secondly, interviewing sex workers in the course of their work raises ethical issues that are difficult to overcome. Also, being a lone male researcher, with no social work experience would have exacerbated these difficulties. This type of research extends beyond the author's academic field of knowledge and range of skills.⁴²

Therefore, the decision was made to rule out conducting interviews with sex workers or clients of prostitution. This decision is not ultimately problematic for the authority of this study. Given that ample material is available from existing research, the study derives from a range of, as far as is possible, objectively obtained and focused material from experts in the sociological/criminological field of prostitution and narratives from sex workers. The material used is located in accordance with the methodological and ethical issues described above, and has been obtained through secure and reliable methods by professionals in the field. In the same vein, existing research data that is used for the narratives in Chapter 13 has been peer reviewed, unlike any interviews that would be conducted 'afresh' for this individual study. This adds to the evidential weight that can be attached to the narratives used.

Doctrinal Method

Very little of this study will incorporate a doctrinal, or 'black letter' method that traditional legal studies might use. Such an approach reviews the law by its letter, and its interpretation. It is a very traditional legal methodology. Morris and Murphy provide that 'it does not subscribe to any overarching theoretical perspective, nor does it concern itself with policy interests. Instead...[it] focuses almost entirely on law's own language of statutes and case law to make sense of the legal world.'⁴³ In places, the doctrinal method will be loosely utilized to explore inter alia, the case law of the ECHR with respect to cases dealing with inhuman and degrading treatment under Article 3 ECHR and the protection of the right to a private and family life under Article 8 ECHR.

⁴² It is not reasonable to have acquired social work skills such as interviewing sensitive and vulnerable persons for the purposes of this research. Ethically, this would have been unsound.

⁴³ Caroline Morris, Cian Murphy, *Getting a PhD in Law* (Hart 2011) 30,31

Charts

In some chapters, charts will be used to illustrate the relevant claims in the substantive thesis. Pie charts and bar charts will be used to this end. The use of charts will not be prolific in the study, but only used where appropriate to visually demonstrate a point or idea.

This chapter has so far considered the core methodological issues, and defined the scope of the thesis. The next section of this chapter explores the methods specifically used to study the sociology of prostitution.

Methods Used In the Study of the Sociology of Prostitution

The sociology of prostitution is complex and multi-faceted. Alternative approaches might be based in criminology or in anthropology, as two examples.⁴⁴ It should be noted that, at the time of writing, most sociological studies are qualitative, based upon empirical data, usually comprising interviews with sex workers and/or clients. Since this is a similarly qualitative, yet predominantly *legal* approach to prostitution, it is important to recognise and account for the fact that law as an academic discipline struggles to deal with the intricacies of sex work, migration and exploitation.⁴⁵ Even so, perhaps the favoured approach to a socio-legal study of prostitution is to avoid the temptation to try to 'solve' prostitution and its associated issues. This approach towards prostitution in this thesis is theoretical, but relevant, as mentioned in the introduction chapter.

The choice of approach is important and the methods by which it is studied need to be ascertained. As such, we now turn to consider the methods that will be used in this thesis to:

- 1) examine prostitution;
- 2) examine accounts from sex workers, and;
- 3) consider the ancillary problem of sex trafficking and its relationship with prostitution

It is imperative to addressing the hypotheses in this study, that the reader understands the lens through which prostitution, as a key issue under examination in this thesis is viewed by the author. Since the author's expertise is situated within law and legal practice, and not in sociology, it has been necessary to study prostitution and the methods sociologists use to

⁴⁴ An example of alternative area of academic interest regarding prostitution is Michel Foucault's focus on sexuality and power in society. This thesis however, does not focus specifically on sexuality and power, or sexuality and society, as per Foucault's main areas of concern. For more information to that end, see Michael Foucault, 'The Subject and Power' (1982) 8(4) *Critical Inquiry* 777

⁴⁵ See Chapter 11

study it. This has led to a decision to consider prostitution, as mentioned, from the GMV model perspective.⁴⁶

Motivations for Study and Research Topic Choice

In social science research, in particular, it is important that critical consideration is given to the researcher's background, and purposes or motivations for the study conducted, in order to understand the epistemological framework of the research. The initial motivation for this study was centred on sex trafficking, particularly in women and children. Following a review of the literature in this area, it became evident that it would be very difficult to locate a gap in the knowledge, suitable to the author's skill areas. As research into the area of sex trafficking continued, the socio-legal status of prostitution was further explored, and the issue of dignity and rights within prostitution from a legal perspective was deemed to be an important area upon which knowledge could be expanded.

Whilst they are debated, the links between prostitution and sex trafficking are highly likely, and demonstrable in some recent studies.⁴⁷ It will be borne in mind that prostitution can be voluntary or forced through some explicit or implicit means, such as financial need. Although this study does not seek to prove or disprove such links; its focus is to engage with prostitution *via-a-vis* the prostitution encounter, and have regard to its impact on the individual human dignity and rights of the sex worker.

As a result of this research, and to be in keeping with the standards set out in international law and *a fortiori* into domestic legislation protecting the rights of individuals, UK policy might be geared around educational and other changes to the legality of prostitution. Many efforts on a variety of legal and charitable fronts are currently being made to end the abuse of women and children trafficked into prostitution, with Parliament considering, and enacting specific legislation to combat trafficking, in 2015 with the Modern Slavery Act.⁴⁸

Legal Definitions of Prostitution

For the sake of brevity and to limit the scope of the study, definitions of what constitutes 'prostitution' and how *it* and the sex worker are defined in the common law and in statute will

⁴⁶ This is explained in further detail in Chapter 11.

⁴⁷ See Cho, Seo Young, Axel Dreher, Eric Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?' (2013) 41 World Development 67

⁴⁸ Modern Slavery Act 2015

be restricted to the twentieth century onwards. As such, the earliest case that considers prostitution and defines it is given in a 1918 case, *R v De Munck*.⁴⁹

Feminist Theory in Prostitution and Pornography

The principal debate in feminist thought that alludes to prostitution and pornography, is contained in the issues of gender and sexuality, in sexual politics and male dominance narratives, and objectification theory. Save that the GMV model is inherently based in feminist theory, and straddles the line between abolitionism and pro-sex work, this thesis does not explicitly adopt a feminist epistemology. It does, however, recognise that the issues that are explored in the instant study are, at least in part situated within modern and historic feminist thought. As such, some references will be made to feminist theory where appropriate, whilst no explicit examination or application of feminist theory or feminist legal theory will be made.

Terminology

This section clearly dictates the terminology that will be used throughout the study. There is firstly an important assertion observed in this thesis, that *prostitution* and *sex work* are not necessarily one and the same thing. As stated when referring to the GMV model and feminist debates in prostitution, the term ‘sex work’ has some alignment with pro-prostitution lobby groups, and as such is not entirely objective. Conversely, prostitution is uncontroversial as a term to describe the vocation of sex workers and the sale of sexual services. In this thesis, the vocation of selling sexual services will be referred to in the main as ‘prostitution’, or as ‘sex work’ only where discussion relates to that context of prostitution. The specific central exchange of sexual services between sex worker and client will be referred to throughout as the ‘prostitution encounter’.

Care must be taken to acknowledge the diversity of the experiences of those selling sexual services, and for some, their trade is sexual services, and they make a free choice, under no coercion to do so. In this light, it is here asserted that the use of the term ‘prostitute’ is highly stigmatised and morally charged. Since this study intends to move beyond a traditional moral-legal approach to prostitution, those who sell sexual services will be referred to as ‘sex

⁴⁹ [1918] 1 KB 635

worker', rather than 'prostitute', with the caveat that there are points in the thesis where the term 'prostitute' is used in context.⁵⁰

As this is a study focused upon female prostitution, the female gender will be used for the sex worker; i.e. 'her', 'she' etc. Those who purchase sexual services will be referred to as 'the client' and will be referred to in the male gender; 'he', 'his' etc.⁵¹

Modes of Dignity Violation

As mentioned, the study will explore a number of different modes of dignity violation.⁵² This classification is unique to this study, and, coupled with IPA dignity, adds to this study's original contribution to knowledge. Included in this will be Martha Nussbaum's taxonomy of objectification which is arguably to be found in relation to the Gender and Male Violence explanatory model.⁵³ Nick Haslam also positively refers to Nussbaum's taxonomy of objectification in his key article on dehumanization which serves to support the use of the taxonomy of objectification coupled with Haslam's two measures of dehumanization (UH and HN) in identifying the diminishing of dignity.⁵⁴ Following phenomenological analysis of sex worker narratives, respective modes of dignity violation are identified, and this will lead to an indication as to any violation of human dignity that the prostitution encounter causes.

Analysis of the Sex Worker

Before we begin to study prostitution, it is important to understand issues raised by those with significant experience in sex work research, relating to the ethically challenging nature of this type of research. In their joint article on ethical dilemmas in sex work research, Stephanie Wahab and Lacey Sloan indicate several areas of concern:

- a) *Population and samples* chosen for research; and dangers of non-random sampling methods, including a focus on street-work prostitution over other, high end escort work;

⁵⁰ Or in quotes from other material, for example.

⁵¹ Some academics, such as Monto refer to the client as 'the customer'; i.e. Martin Monto, 'Female Prostitution, Customers, and Violence' (2004) 10 *Violence Against Women* 160

⁵² A full explication of this concept is set out in Chapter 8

⁵³ Martha Nussbaum, 'Objectification' (1995) 24(4) *Philosophy & Public Affairs* 249

⁵⁴ Nick Haslam, 'Dehumanization: An Integrative Review' (2006) 10(3) *Personality and Social Psychology Review* 252

- b) *Class discrimination*; focusing on street-level work, conducted by generally middle-class social researchers and ignoring escort and high end prostitution causes a so-called 'studying down' phenomenon;
- c) *Gender discrimination*; Making male and transgendered sex workers 'invisible' and generating the image that female sex workers are 'the problem';
- d) *Theoretical bias*; portrayal of sex workers as victims, promoting the notion that all sex workers require therapeutic intervention as a result of their involvement in the sex industry, obscuring issues of agency and free will, and sex work as legitimate work.
- e) *Relationship to research participants*; objective observers becoming solely responsible for defining the realities of those being studied, which in turn denies sex workers the right to be experts in their own lives. Detachment between researcher and research subject breeds negation of the sex worker's take on the issues subject to research.⁵⁵

The recommendations of that article for sex work research are particularly useful for first-time sex work researchers to consider before undertaking any face-to-face research. They recommend that⁵⁶:

- 1) Researchers must collaborate with the sex workers they seek to study – all aspects of the study design, theoretical framework, methods and dissemination should be shared;
- 2) Researchers should be aware of social, political, economic and personal power issues, and seek to equalise power relationships with the sex workers they study. Due deference should be accorded to sex workers' own expertise in this field for example;
- 3) Researchers must bring the results back to the sex workers they study to ensure that the researcher's interpretation of the data is accurate;
- 4) Sex workers and sex work organisations are encouraged to hire their own researchers and initiate research themselves.⁵⁷

⁵⁵ Stephanie Wahab, Lacey Sloan, 'Ethical Dilemmas in Sex Work Research' (2004) 7 Research for Sex Work 3

⁵⁶ Ibid 5

⁵⁷ For example, see Carol Jenkins, 'Cambodian Sex Workers Conduct Their Own Research' (2005) 8 Research for Sex Work 3

Whilst in this study no face-to-face interviews will take place, it is important to consider that material gathered should satisfy ethical considerations, in the same manner as if the research was directly extracted by the author. Care has been taken not to identify only with one market of prostitution, particularly as street work is the most likely to be encapsulated in research about violence in prostitution.⁵⁸ The existing data used is sourced from well-renowned researchers, who are academically recognised for their adherence to the ethical criteria set out above.

The Client

There will be some limited mention of the issues faced by clients in prostitution, in order to give a reasonably balanced understanding of the prostitution encounter. The data from clients is sparser than that concerning the sex worker. Also, as the literature indicates, reliability is at issue often because clients are secretive and at times, uncooperative in providing accounts of their experiences of prostitution.⁵⁹ The focus of most studies of the client centres on several key factors, as identified by academics in this field, such as ethnography, studies of attitudes and behaviours as well as philosophical/psychological studies.

The key reference for this data is Teela Sanders 2008 work, an empirical study of 50 interviews with male clients, 37 face-to-face and 13 telephone interviews.⁶⁰ This section refers to the results of this study, and therefore is restricted to the methodological restrictions therein. It is not intended that this section be exhaustive of the issues associated with all clients of all backgrounds, and no assertion is so made.

Methods Specific to the Application

Sex Worker Narratives

The study will rely upon narratives taken directly from sex workers who were interviewed about their experiences of the prostitution encounter and violence in prostitution. As previously stated, consideration was given to conducting interviews and/or questionnaires of current or former sex workers. The potential benefits to this research versus the ethical risks/harms were considered. This type of data collection was precluded on the grounds that

⁵⁸ This will be clearer later on in the review of the sociology of prostitution, Chapter 11

⁵⁹ I.e. Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008)

⁶⁰ Ibid

the data that would be gained from conducting interviews or questionnaires with current and former sex workers would be of no greater evidential value or quality than that which is presently available, save that appropriate weight must be accorded to material found in mainstream published works, media sources etc. Empirical data obtained through ethically sound methods, by skilled social workers has been favoured in this study.⁶¹ It is intended that other scholars may take the models used in this thesis to expand on the area of human dignity research in prostitution, and also into other key areas of sociological interest.

How is the Material Selected from the Literature?

Appendix B sets out a table which outlines the sources of narratives. Where narratives are taken from empirical studies, drawn predominantly from interview-focused evidence gathering, and in order to provide the maximum feasible accuracy and evidential soundness, a number of decisions are made and justified regarding the choice of material for this analysis.

It is important to select narratives which represent as expansive a selection of viewpoints as is possible from the range of materials chosen within the substantive literature. An important classification of the literature is that work which could be objectively claimed to reside within the GMV model would be used exclusively to provide narratives.⁶² It was also important to consider that all 'markets' of prostitution could be included, and so accounts ranging from street prostitutes, through to brothel workers and to escort workers are utilised, thus reflecting the range of safe practice, money earned, quality of work, clients etc. It is also vital that those who openly object to sex work are balanced with those who oppose that view.⁶³ All the sources used share common themes of analysis, including the health and wellbeing of those interviewed, but most importantly all consider the sale of sexual services at the heart of prostitution. The texts adopted are from both poles of the GMV scale; some are overtly abolitionist, and others are pro-sex work in their general ethos.

As with comparative legal studies, judging from 'when' in time accounts should be taken is important. Issues that will have a potential influence on accounts will be; the legislative

⁶¹ And, as mentioned above, peer reviewed studies are essentially more reliable.

⁶² This is in keeping with the methodological scope of the work, to consider prostitution from the GMV perspective.

⁶³ As is explained more fully in Chapter 11, the GMV model encompasses two central positions, one for prostitution as legitimate trade and a recognition of the rights of women to sell sex, and an opposing 'abolitionist' position, which postulates prostitution as 'violence against women'. The GMV model allows both viewpoints, and this makes it an objectively more balanced approach.

'climate' relevant to prostitution at the time of the experiences reflected upon; the government in place at the time and its social policies on prostitution; the media's portrayal of sex work; education and social research in sex work at the time, and so on. It is perhaps impossible to account for all potential material influences upon the experiences of sex workers in a given place and era, but attempts must be made to mitigate any clear and obvious factors that may have influenced those experiences which are then used to assess modes of dignity violation and subsequent conclusions as to dignity violation. The narratives are drawn collectively from data collected between the early 1980s and 2000.

It will be of equal importance where the events catalogued have taken place. Narratives will largely originate from the United Kingdom where possible, to reflect the author's geographical sphere of socio/political and legal knowledge, but there will be accounts and material also from the USA and Canada.⁶⁴ The choice of narratives against which analysis of the concepts of objectification and dehumanization can be made is crucial. This will unavoidably be an assessment of mine, based upon interpretations in phenomenological analysis as to any perceivable objectification and dehumanization, or other modes of dignity violation found therein.

After screening the material via the stages above, the material is summarised with any pertinent points highlighted in the literature review. The focus of analysis will be on narratives which suggest modes of dignity violation, according to those expounded in Chapter 8. The various modes of dignity violation will be related to these narratives, and the reader can observe and reflect upon the accounts given, to provide a considered opinion on the nature of the experiences reviewed. Once this has been completed, the violation of human dignity can be identified.

Having given consideration to the above in selecting the material that the narratives will be taken from, certain texts will be used to provide narratives, which are seminal, GMV oriented works based upon empirical research.⁶⁵ See Appendix C which sets out in further detail the dataset for the narratives used.

⁶⁴ Because some sources provide accounts from these jurisdictions. These are common law jurisdictions, also.

⁶⁵ Cecile Høigård, Liv Finstad, *Backstreets: Prostitution, Money and Love* (Cambridge: Polity 1992); Joanna Phoenix, *Making Sense of Prostitution* (Palgrave 1999); Karen Sharpe, *Red Light, Blue Light: Prostitutes, punters and the police* (Ashgate 1998); Eileen McLeod, *Women Working: Prostitution Now* (London: Croom Helm 1982); Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998) Claude Jaget (ed) *Prostitutes, our life* (Bristol: Falling Wall Press 1980)

Prostitution Encounter or Prostitution Vocation Narratives?

In the texts adopted as sources of narratives, there are essentially two types of narrative discernible from the chapter structure.⁶⁶ Some narratives relate to the sex worker's experience of working as a prostitute, which includes issues that are ancillary to the sale of sex, (i.e. health concerns, issues of pimps, making money, market-specific issues). These narratives are hereafter termed as Prostitution Vocation narratives (PV). This study is concerned however with the alternate type of narrative, which describes the sex worker's experience of the Prostitution Encounter, and these 'PE' narratives are used to address the hypothesis. Why, then, are the PV narratives not used? It is the purpose of this study to interrogate dignity violation in prostitution, but specifically in the core aspect of prostitution, that being the sale of sexual services.⁶⁷

Owing to this distinction in the material used, the analysis in Chapter 13 only considers modes of dignity violation as recognised within the prostitution encounter, on behalf of the sex worker. It does not consider some other key factors in the prostitution vocation, such as the general and sexual health and wellbeing, or labour rights of sex workers.⁶⁸ Of course, there are very important considerations to be made in relation to these other issues in prostitution. Within this area, we find, inter alia, the emotional integrity and psychological welfare of the sex worker as an important consideration in any discussion on human dignity, an example of which is research which explores bodily dissociation in the sex worker.⁶⁹ Teela Sanders identifies strategies to manage emotions in sex work. She says that:

In the context of prostitution, emotion work is carried out on feelings in private. Women work on their internal feelings to separate, change and revise one set of feelings that are appropriate during sex work while reserving another set of emotions or feelings for private interactions.⁷⁰

⁶⁶ Sections relevant to the sale of sexual services and experiences pertaining thereto were reviewed for narratives.

⁶⁷ It is clear from the 'Honeyball' report mentioned in the Introduction, that the fundamental issue in public policy on prostitution is the sale of sexual services, and this emphasis is followed in this study in its analysis of dignity violation in the prostitution encounter.

⁶⁸ It is hoped that this research will lead into further applications of IPA to these ancillary areas of the prostitution vocation.

⁶⁹ This is frequently addressed in the literature. Numerous examples can be found of comments relating to bodily dissociation, i.e. '...this body isn't the same body – the one the client gets isn't the real one, it's not mine...' C Jaget, *Prostitutes – Our Life* (Bristol: Falling Wall Press 1980) 151, quoted in Høigård & Finstad (Polity 1992) 63

⁷⁰ Teela Sanders, "'It's Just Acting": Sex Workers' Strategies for Capitalizing on Sexuality' (2005) 12(4) *Gender, Work and Organization* 2005, 325

The Use of Phenomenology as a Method to Study Sex Worker Narratives

Phenomenological studies place particular emphasis on individuals' views and personal experiences.⁷¹ To study phenomenology is to study the experience of a person, and the meanings the persons ascribes to their experience/s. Denscombe describes the method as an appropriate method to understand *how* something is experienced.⁷² Since this is a study of human dignity vis-a-vis prostitution, the thoughts, emotions and experiences of human beings are essential to it. In keeping with this as a socio-legal study, a phenomenological approach will be used to examine narratives of sex workers within the context of the prostitution vocation.

By using this approach, the study will demonstrate how, through the narratives of those involved in prostitution, modes of dignity violation occur which indicate the violation of IPA dignity. It is essential to observe the task of the phenomenologist, which, as stated by Denscombe is: '...to present the experiences in a way that is faithful to the original....to provide a description of matters that adequately portrays how the group in question experiences the situation'.⁷³ In considering the narratives that follow, we must remain true to the text of the narrative, exploring meaning and allowing for the nuances of subjectivity therein.

Specifically, the study will incorporate the North American school of phenomenology, of Alfred Shutz,⁷⁴ which is concerned with the ways people interpret social phenomena.⁷⁵ In the application chapter of this study, how sex workers interpret the prostitution encounter will be essential to understanding whether human dignity is likely to have been violated by any identifiable modes of dignity violation. Dignity violation will be indicated precisely by this analysis of the *experiences* of the sex worker, taken from the narratives.

A phenomenological method is appropriate in qualitative social science research to explore how people experience certain phenomena. In this study, the phenomenon is the prostitution encounter for the sex worker. In the encounter on behalf of the sex worker, issues will be apparent from the narratives. Using the phenomenological method, the application chapter will analyse narratives from the sex worker to address the hypothesis. The IPA model of dignity will be utilised to determine the answer to that central hypothesis question. Therefore,

⁷¹ Martin Denscombe *The Good Research Guide* (4th edn Open University Press 2010) 94

⁷² Ibid

⁷³ Ibid 95

⁷⁴ Alfred Shutz, *The Phenomenology of the Social World* (Evanston, IL: Northwestern University Press 1967)

⁷⁵ Martin Denscombe *The Good Research Guide* (5th edn Open University Press 2014)101

in the narratives that follow, attention is particularly paid to experiences that suggest violation of human dignity through the modes of dignity violation as expounded.

Firstly, the narrative is set out that presents an experience of the sex worker, and then the experience is analysed to identify language which points toward dignity violation. Respective modes are identified, and related to IPA dignity. This leads to an indication as to violation of IPA dignity.

Summary and Next Chapter

This chapter set out the methodology, scope and objectives of the study. It presented the general methods used, and those used in the sociological aspect of the research. It considered ethical issues in sex worker research, and important concerns therein. There was a discussion about the knowledge gap, and the substantial contribution to knowledge that this study makes. The concept of ‘modes of dignity violation’, which, like IPA, is original to this study, was introduced.

As this chapter has established, this will be a mixed-methods socio-legal study. The thesis is divided hereafter into three further parts. The next, part 2 explores the core themes of human dignity, the violation of dignity and outlines the different approaches to the subject before constructing the descriptive IPA model of dignity. Part 3 addresses the need for a normative framework for IPA in order for it to be applied to address the hypothesis, and presents the work of John Finnis, vis-à-vis practical reasonableness. Part 4 thereafter explores the sociology of prostitution, which will be represented in as much detail as is necessary in order to present the predominant issues and locate the key issues for analysis in the GMV model, and ends with the application and conclusion to this work.

PART TWO

3. CORE THEMES OF HUMAN DIGNITY

This chapter initiates part 2 of the thesis, the purpose of which is to introduce human dignity, and explicate its different descriptive interpretations, leading to the construction of the IPA model. The purpose of this chapter is to discover human dignity in the literature, and identify what will be termed the core themes of dignity in quasi-legal academic disciplines, and explain the method through which these themes are deduced. The chapter will lead from these themes of human dignity, into the next chapter, which focuses on the concept of dignity in international human rights law. The process and ultimate purpose of part 2 will be, therefore, a refining of human dignity from the central themes in the literature to three elements in a legal model of dignity which has relevance for addressing prostitution.

Introducing Human Dignity

The invocation of the term 'dignity' may be tantamount to speaking of important human values or human nature itself. The word dignity, in a personal sphere is synonymous with self-respect, self-worth and pride. It can also relate to royalty, nobility, decorum and grandeur.⁷⁶ Historically, some concepts date back to early Greek philosophy.⁷⁷ The modern English word 'Dignity' derives from the Latin *dignitas*, which referred to honourable status in the ancient Roman world.⁷⁸ In Roman history, *dignitas* was accrued by those with social status, as opposed to an inherent concept, possessed by all. Dignity can be communitarian or it can be individualistic.⁷⁹ So, as a concept it has very ancient roots and is well established, and, given its roots, one might consider there to be little controversy over its

⁷⁶ McCrudden C, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655

⁷⁷ As will be seen in Chapter 6, Leslie Henry identifies this type as 'personal integrity as dignity' in her work; L Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169

⁷⁸ I.e. Jürgen Habermas, 'The Concept Of Human Dignity And The Realistic Utopia Of Human Rights' (2010) 41(4) *Metaphilosophy* 464, 474; McCrudden C, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655

⁷⁹ For example, Kantian dignity, as mentioned here, is arguably individualistic, whereas the Jewish Kavod is probably more aligned with a communitarian idea of dignity, since the Jewish Torah and Christian Bible both present a relationship and rules between God and the people of Israel as a community or nation. See the books of Genesis and Exodus which describe this relationship in detail. In the main, this study concentrates on the latter type of human dignity, and certainly IPA dignity is an individualistic notion.

cross-disciplinary academic use. But dignity more recently comes under fire from a number of scholars as being 'squishy' and 'subjective' and 'hardly up to the heavyweight moral demands assigned to it',⁸⁰ indeterminate,⁸¹ 'hopelessly vague'⁸² or a restatement of the right to autonomy.⁸³ It is a subject that might be called kitsch, or sentimental.⁸⁴ It is also apparent that it is not merely one uniform concept, but a number of separate ideals which rest under one heading.

The purpose of this chapter is to identify core themes human dignity. There are many disciplines to choose from, but as this study is a legal one, this review concentrates on certain concepts evident from seminal texts on quasi-legal applications of dignity.⁸⁵ In determining the broad themes of dignity, we are assisted by an inductive analysis of dignity suggested by Dietrich Ritschl, which breaks human dignity up into four specific notions, and introduces the idea of dignity as a 'frame-concept'. Dietrich Ritschl proposes that dignity is a 'frame-concept', and as such it 'embraces sub-concepts which may or may not always be part of what is meant when the term is used'.⁸⁶ He describes four notions of human dignity as it might be applied within ethical maxims.

The analysis draws comparisons between legal and associated study areas by theologians and lawyers, observing the similarity of approaches to understanding concepts like dignity. Ritschl states that lawyers and theologians understand concepts like dignity in similar ways; '...they work with given texts to which they ascribe certain degrees of normativity...they both

⁸⁰ Steven Pinker, 'The Stupidity of Dignity' (2008) May 12 2008 The Richard Dawkins Foundation for Reason and Science <http://richarddawkins.net/article,2567,The-Stupidity-of-Dignity,Steven-Pinker,1>

⁸¹ T Khaitan, 'Dignity as an Expressive Norm: Neither Vacuous Nor a Panacea' (2012) 32(1) Oxford Journal of Legal Studies 1, 1

⁸² R Macklin, 'Dignity is a useless concept' (2003) 327 British Medical Journal 1419, 1420

⁸³ Ibid 1419

⁸⁴ Avishai Margalit, 'Human Dignity between the Kitsch and Deification' (2004-5) Essay given at Litowitz Lecture, Yale University October 14th 2004

⁸⁵ Texts include Deryck Beyleveld, Roger Brownsword, Human Dignity in Bioethics and Biolaw (OUP 2001) which examines bioethical and legal applications of dignity; David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002) presenting theistic and legal perspectives on human dignity and its position in human rights law; Patrick Capps, Human Dignity and the Foundations of International Law (Hart: Oxford and Portland, Oregon 2009), which considers dignity in international law and legal theory, as well as concepts of morality, such as practical reasonableness, which ties with some reference to the work of John Finnis in this study, see John Finnis, *Natural Law and Natural Rights* (OUP 1980); Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) European Journal of International Law 655 which presents a legal and historical account of human dignity. McCrudden makes reference to Kretzmer and Klein in this article.

⁸⁶ D Ritschl, 'Can ethical maxims be derived from theological concepts of human dignity?', In David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002) 87ff

work with concepts, clusters of concepts and theories.⁸⁷ As such, he highlights a possible flaw in the approach used by lawyers when attempting to make sense of human dignity, that by its very nature, it is in his opinion impossible to quantify. In fact, Ritschl presents a strong argument against attempting to model dignity on this basis,⁸⁸ and if dignity is to be measured at all, it should only be measured by impartation; i.e. the way people treat others imparts in them human dignity, a suggestion that is not unique to Ritschl.⁸⁹

Ritschl's assertion is that the concept of human dignity is derived from inductive, as opposed to deductive reasoning.⁹⁰ Thus, the notions of dignity he sets out within the frame-concept are used to provide an account of dignity generally.⁹¹ In the same way, this chapter reviews some of the key literature on dignity and determines what dignity 'is' utilising an inductive method of reasoning. Therefore, from the literature, there are two recurring themes in respect of dignity, and through the lens of these, dignity is construed. These themes are, firstly, dignity is inherent to all humanity; and secondly, dignity is related to, and at times conflated with autonomy. Before we explore these, the next section briefly summarises some major and minor themes of dignity in the literature.

Ancillary Themes of Dignity

Firstly, and as will be demonstrated in others' concepts of dignity expressed further on, the notion of *inherent* dignity is possibly the most widely held and broadly accepted of all concepts of dignity. This is in secular as well as theological thought.⁹² The idea of dignity as

⁸⁷ Ritschl Ibid at 88. This link between the legal and theological reasoning is helpful in that it draws a link between the theistic understandings of dignity, as will shortly be considered in this chapter, and legal ones, which are considered in the ensuing chapters of this Part Two.

⁸⁸ It appears that his main concerns relate to the impression that dignity is too broad a concept to be defined, and is only ascertained through inductive reasoning.

⁸⁹ What he describes is what is termed by others as collective dignity which is imparted on others. This type of dignity is problematic and is not adopted in this thesis, since it appears to be incompatible with the concept of dignity as inherent. In a model of dignity therefore, the two elements could not lie side by side. This type of dignity is also termed 'relational dignity' by Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655.

⁹⁰ As Paul Tomassi puts this, inductive reasoning, (which he is a particular advocate for) involves 'reasoning from the particular, to the general'; P Tomassi, *Logic* (Routledge 1999)

⁹¹ As will be presented in the ensuing chapters, this method is used to construct IPA dignity from the broad concepts here presented, through to legal ideals of dignity.

⁹² I.e. George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011). Kateb takes a purely agnostic approach to dignity in his work, which is typically centred in political science. In spite of this view, he considers dignity to be inherent in human beings.

intrinsic or inherent is either tied with the biblical tradition, known as the ‘image of God’ theory⁹³ in Christian theology⁹⁴, or as Ritschl indicates, the ‘Physis-Concept’ of dignity is based on a Stoic philosophy. Human dignity is also recognised and empowered by means of treaty, where dignity is granted to the people under social contract, which is the Hobbesean/Lockean approach. This, in tandem with inherent dignity, is the theme of dignity that is recognised as foundational to human rights theory and law. As Ritschl outlines, both Hobbes and Locke’s version of dignity was a ‘status’ to be protected by the state, with Locke introducing the concept of the ‘social contract’, which consisted of the people of a society giving up some rights to the state, in order that that state would protect them.⁹⁵ This type of dignity is man-made, and appears akin to a type of dignity discussed later in Chapter 6.⁹⁶ Dignity is a pluralistic concept, which ‘encompasses the liberal notion of negative freedom’.⁹⁷

Individual and Communitarian Human Dignity

Whilst in this study we will construct a model of *individual* human dignity, it is pertinent that we reflect upon communitarian dignity as well, before continuing. Communitarian dignity is illustrated perhaps by a discussion of the loss of dignity. If one holds the belief that human dignity is inherent to all human beings, then it follows that such dignity cannot be lost. This point is suggested by many authors on the subject, evident throughout the literature. In the inherent dignity model, which has an individual focus, human dignity cannot be lost, because it is self-evidently existent within every person.

⁹³ The Latin term used for this broad concept, and utilised intermittently throughout the thesis is *Imago Dei*. Key literature which considers this concept includes the seminal edited text David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002).

⁹⁴ Equally, in the Jewish faith we find the term *Kavod*, which represents the dignity of God. See for example O Kamir, ‘Honor and dignity cultures: The case of Kavod and Kavod Ha-Adam in Israeli society and law’ in David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002) 231-262

⁹⁵ See also Theo Verbeek, ‘Rousseau and human dignity’ in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 117ff. The social contract theory is not expressly presented in this study, but instead the focus is on the result of such theory vis-à-vis dignity – human rights theory and substantive law.

⁹⁶ Set out by Neomi Rao as ‘substantive conceptions of dignity’; Neomi Rao, ‘Three Concepts of Dignity in Constitutional Law’ (2011) 86(1) *Notre Dame Law Review* 183, 221. Capps observes Hobbes and Locke in their estimation of human dignity as being necessarily intrinsically related to autonomy, also citing Gewirth on agency; Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart: Oxford and Portland, Oregon 2009) 105ff. Dignity is demonstrable where human beings are able to achieve their own purposes, unrestrained inasmuch as this doesn’t restrict or negatively affect the dignity of others. The conflation of dignity and autonomy is discussed in the next section.

⁹⁷ Rao *ibid* 187

But this position is very different with a communitarian model however. A communitarian focus addresses how members of civilised societies 'ought' to behave and 'ought' to be treated in order to respect the collective dignity of humanity.⁹⁸ The behaviour of members of that community which has a negative impact upon that community will also affect the dignity of the whole community:

Where a communitarian approach is taken, human dignity speaks less to what is special about human beings qua human and more to what is special about a particular community's idea of civilized life and the concomitant commitments of its members.⁹⁹

With a communitarian dignity, the wider community's needs are deemed to be more important than those of the individual.¹⁰⁰ In contrast to the above, communitarian dignity might be lost altogether. For example, although it would be difficult or impossible to show that the entire community has suffered a loss of its dignity, if the community has suffered a mass crime, for example, it may be possible to indicate a violation of communitarian dignity. In the mass rape and killings of the 1994 Rwandan genocide for instance, where approximately 1,000,000 people were murdered, it might be said that the dignity of entire communities were, if not lost, at least severely violated and diminished.¹⁰¹

This is very different to individual dignity, a difference highlighted here by Statman, in his account of the relationship between humiliation and dignity. He speaks of humiliation as a method of dignity violation, which is said to 'strip its victims of dignity', and argues that [individual] human dignity, if understood in either a descriptive or normative fashion cannot possibly be lost entirely:

...If we hold a descriptive account of dignity, it is difficult to see how such a loss can occur, especially when we bear in mind that the feature that entitles humans to dignity belongs to all members of the species, irrespective of their individual capacities or

⁹⁸ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169, 220-221

⁹⁹ Deryck Beylveled, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 65

¹⁰⁰ As such, human dignity can be a 'two-edged sword' in that 'there is potentially a tension between human dignity in support of autonomy and human dignity as a constraint on autonomy in the context of the tension between the dignity of the community, or the state determined dignity of the individual, and the autonomous free will of the individual; Ibid

¹⁰¹ In the particularly dire circumstances of the genocide, mass rape was held to amount to genocide by the International Criminal Tribunal for Rwanda, since it involved the intentional 'wiping out' of a culture. In such extreme circumstances, dignity is strained to its very core.

behaviour. If human beings with limited rational capacities nevertheless possess dignity, then one cannot rob human beings of their dignity by injuring their rational capacities¹⁰²

On an individual basis, according to the inherent dignity element of the model of dignity, dignity is intrinsic to all humanity, regardless of the ability to show autonomous, measurable human functioning, so that even the severely disabled in body and/or mind share intrinsic dignity with those who are fully able in both body and mind. In an individual, dignity being inherent, it cannot ever be removed or lost because it exists by the very fact that the person is a human being.

This helpfully leads us now into a discussion of two core themes of human dignity discernible from the literature, beginning with the inherent nature of dignity. Whilst there are many ideas of what dignity amounts to, in both an individual and communitarian sense, we will now induce from the literature that the two ensuing themes represent a universal bedrock of understanding for what dignity is for individuals.

Core Theme One:

Dignity as Inherent

As will become clear as this thesis unfolds, it is notable that much has been written on the concept of inherent or intrinsic human dignity which is given as bestowed upon man by God. In Judeo-Christian theology, human dignity appears to derive from humanity itself, as created by God. In Genesis, Moses records that God created man in his image. Interestingly as God comments on his own creation; the earth, oceans and animals, he sees that they are 'good'. Only when he has created man does he say that 'it is very good'.¹⁰³ Thus, in Judeo-Christian theology, man is created in the likeness of God, as a special creation, set apart from and having dominion over all the creation. Since man is created in the likeness of God, and counted separate and distinct from the rest of creation, we are imbued with 'humanity' as distinct from all other animals. So a person is a human being, who demonstrates character, a persona or personality. This alludes to the ancient Greek term *nooma*, which refers to what we might understand in modern culture as a 'soul'.

¹⁰² Daniel Statman, 'Humiliation, Dignity and Self-Respect' in David Kretzmer, Eckart Klein (eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002) 211-212

¹⁰³ Genesis 1:31

A personality is made up of a variety of aspects, including inter alia, voice, temperament, experience, education and 'wisdom', physical appearance, skill-set and religious beliefs. From the creation and throughout the Christian bible, it can be seen that God has a special relationship with man as distinct from all other creation, again signalling the connection between God and man being a close bond. Whilst man is not God and has faults inherent in his character following his 'fall' into sin,¹⁰⁴ meaning that he is not perfection as God is, man is clearly special to God; a theme continued throughout both Testaments of the Bible.

In Jewish thought specifically, it is the *Kavod* of God which is endowed upon human beings, that sets them apart from the rest of the animal kingdom. This *Kavod* is given - not inherent in the human being.¹⁰⁵ It is also apparent in the teachings of the Old and New Testament, a focus not necessarily on individual needs and concerns, but on the needs and concerns of the community, and so perhaps dignity in that sense was more like a community-focused model described later. This can be seen in the book of Deuteronomy, where God instructs his people Israel to observe his commands and receive blessings in return, or disobey and be cursed.

The Hebrew understanding of the text would have been that the wording in the book related to the nation of Israel, and thus, if the nation observed all of God's commandments the nation would be blessed, despite the fact that individuals would still have difficulties at times.¹⁰⁶ It was not only the Israelites who could benefit from this - throughout the Torah, the concept of love for one's neighbour is abundant, and commandments for Jews towards other Jews were conveyed equally towards 'strangers'.¹⁰⁷

Leon Kass is a particularly well-known scholar who focuses upon the biblical connotations of human dignity. Kass, who is heavily criticised by Steven Pinker,¹⁰⁸ suggests that there exist two forms of the concept – *human* dignity and human *dignity*; the subtle difference between

¹⁰⁴ Genesis 3

¹⁰⁵ Ritschl in Kretzmer and Klein op cit 95

¹⁰⁶ Deuteronomy 28:1ff

¹⁰⁷ Leviticus 19:18-34. For more on the Jewish tradition on dignity, see Yair Lorberbaum, 'Human dignity in the Jewish tradition' in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014)

¹⁰⁸ Steven Pinker, 'The Stupidity of Dignity' (2008) May 12 2008 The Richard Dawkins Foundation for Reason and Science <http://richarddawkins.net/article,2567,The-Stupidity-of-Dignity>, Steven-Pinker, 1. Pinker discredits Kass, who provided bio-ethical consultation to the White House during the second Bush Administration, for the distinctly Catholic moral tone of his writing. See also Leon Kass, *Life, Liberty and the Defense of Dignity: The Challenge for Bioethics* (Encounter Books: San Francisco 2002)

the two being the emphasis on the *humanity* or the *dignity* of being human.¹⁰⁹ His stance is that biblical teaching indicates that dignity deriving from God inheres in man, and is identifiable also in emphases on man's equality with each other.

Of course, this theistic ideal of human dignity only holds if one is not agnostic or atheist. As some scholars have sought to demonstrate, inherent dignity may be proved with agnostic methods. One non-theological way of distinguishing human nature and thus dignity, is through comparison between human beings and animals.¹¹⁰ This approach is adopted by, inter alia George Kateb, and Peter Singer, who has written on animal *rights*.¹¹¹ Kateb concentrates on a version of inherent dignity which is agnostic:

I wish to go to the extent of saying that the human species is indeed something special, that it possesses valuable, commendable uniqueness or distinctiveness that is unlike the uniqueness of any other species. It has a higher dignity than all other species, or a qualitatively different dignity from all of them. The higher dignity is theoretically founded on humanity's partial discontinuity with nature. Humanity is not only natural, whereas all other species are only natural. The reasons for this assertion, however, have nothing to do with theology or religion.¹¹²

Kateb's position is to consider human dignity as inherent in human beings as special, not because we are created by God, but because we exhibit traits and characteristics which distinguish us from the rest of the animal kingdom. It is these distinguishable qualities which necessitate particularly distinct treatment towards human beings: '...the human species is...the only animal species that is not only animal, the only species that is partly not natural, and that is therefore unpredictable in its conduct despite its genetic sameness from one generation to the next.'¹¹³ Where Kateb says that we as a species are partly 'not natural', he

¹⁰⁹ See Kass L, 'Defending Human Dignity' (2007) Bradley Lecture at the American Enterprise Institute, February 5 2007

¹¹⁰ For example, Tasioulas outlines a 'human nature ideal' of dignity in a thorough, non-theistic iteration: 'The idea of human dignity is the idea of an intrinsically valuable status...in broad outline it is to belong to a species which is in turn characterised by the possession of a variety of features: a characteristic form of embodiment; a finite lifespan of a certain rough magnitude; capacities for physical growth and reproduction; psychological capacities, such as perception, self-consciousness, and memory; and specifically rational capacities, such as the capacities for language-use, for registering a diverse range of normative considerations (including evaluative considerations, prudential, moral, aesthetic, and others besides), and for aligning one's judgments, emotions, and actions with those considerations.'; John Tasioulas, 'Human Dignity and the Foundations of Human Rights' in Michael Freeman, *Lloyd's Introduction to Jurisprudence* (9th edn Sweet & Maxwell 2014) 1331

¹¹¹ Peter Singer, *Animal liberation* (Random House 1995)

¹¹² George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011) 5

¹¹³ Ibid 11

alludes to the *nooma* – ‘soul’ element of the human being here, as previously stated. We possess as humans an element of ‘person’ which extends beyond the animalistic, and perhaps within this soul rests the inherence of dignity.¹¹⁴

This approach is not entirely modern, however. Immanuel Kant identified that human beings are distinct from animals because of humanity’s ability to reason.¹¹⁵ Leaving aside obvious arguments about evolutionary development vs. creation, it is certainly agreeable that human beings differ from animals in as much as humans are accorded, (in legal terms and in societies across the globe), a respect and deference not so accorded to animals.¹¹⁶ Even the most intelligent animals are unable to demonstrate human characteristics such as developing an education, marrying, or choosing a religion, and are not able to enact laws and policies as human beings are. In spite of this Western impression of the divide between the animal and human kingdoms, in some cultures the worship of animals as sacred or deified creatures does reverse this balance, by placing the animal above the human being; e.g. sacred cows in India representing wealth and prosperity in Hinduism and Zoroastrianism.

And so, human dignity is not only a faith-based notion. It is probably a moral¹¹⁷ and philosophical concept as much as it is a theistic one. It is termed by Margalit as a ‘morality of ends’, which he states:

...is based on a vision of the place of creatures in the chain of being. Man is the “crown of creation,” that is, a creature who must be treated in a special way because of what he is. Any treatment that does not accord Man his special place in the chain of being constitutes humiliation. This sort of morality is based not on duties or commandments but on the personal example of an individual who epitomizes it.¹¹⁸

To adopt an ideal of inherent dignity does not necessitate a theistic approach. Even so, some have asserted that secular means by which we can understand the existence of

¹¹⁴ Those seeking an opposing argument are directed to Rachels: James Rachels, *Created From Animals: The Moral Implications Of Darwinism* (OUP 1990) 171

¹¹⁵ See generally Immanuel Kant, (M Gregor (tr)) *The Metaphysics of Morals* (CUP 1996)

¹¹⁶ Or, for the avoidance of ambiguity, at least to a greater extent than animals, since animals clearly have protection under various international domestic law. Those laws are enacted on their behalf by human beings, who possess the capacity so to do.

¹¹⁷ Beyleveld and Brownsword hold that dignity is *always* a moral concern; Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 66ff

¹¹⁸ Avishai Margalit, *The Decent Society* (Harvard 1996) 34

human rights, and a fortiori human dignity, should not be the only means by which we understand them.¹¹⁹ As R H Tawney stated;

The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God.¹²⁰

We should thus, in that opinion, ensure that we do not discount a theistic approach to dignity, even, it might be added, when considering the concept as it could apply *legally* within a pluralist state such as Britain.¹²¹ Those venturing into the study of the idea of dignity should be under no false pretence that it is a concept which is easy to define, or to actually prove the existence of.¹²² A particular difficulty with dignity is converting it from a descriptive and theoretical to a normative concept.¹²³ Nonetheless it remains a topical and prominent subject in philosophical, ethical and moral discourse. Perhaps in defining human dignity, we must adopt not one approach, but a holistic method, particularly when seeking to define human dignity and the theory of human rights and morality.¹²⁴ The ensuing quote summarises what in this section has been expressed, and suggests something of the mystery of human dignity:

It is difficult to define what human dignity is. It is not an organ to be discovered in our body, it is not an empirical notion, but without it we would be unable to answer the simple question: what is wrong with slavery?¹²⁵

¹¹⁹ I.e. Michael J Perry, *The Idea of Human Rights: Four Inquiries* (OUP 1998)

¹²⁰ J M Winter, D M Joslin (eds), *R.H. Tawney's Commonplace Book* (1972) 67; quoted in Perry *ibid* 11

¹²¹ It isn't beyond comprehension that to assume a purely religious mode of thinking to analyse human dignity as a concept based in morality and human rights theory might be problematic. For instance, in his review of Perry *op cit*, Fagan explores Perry's focus on a religious understanding of the source of human rights, and comments that caution to this end is advised; Andrew Fagan, 'Between God and Democracy' (2002) 2(2) *Human Rights & Human Welfare* 15, 20-21. This view is agreeable in as much as human dignity, which is arguably central to human rights theory, is, as is explored here, found in more than just theological interpretations thereof.

¹²² For example see Statman in Kretzmer and Klein *op cit* 211, who indicates that ascertaining that dignity even exists is a significant challenge pertaining to its utility and applicability.

¹²³ Statman *Ibid* for example. In recognising dignity as a normative concept, Feinberg has been suggested that it is 'simply the recognizable capacity to assert claims'; Joel Feinberg, 'The Nature And Value Of Human Rights' In Joel Feinberg, *Rights, Justice, And The Bounds Of Liberty*, (Princeton University Press 1980) 159, 166

¹²⁴ As propounded by Fagan, in Andrew Fagan, 'Practicing Universality: The Inter-Disciplinary Imperatives of Human Rights' (2003) Vol 3 *Human Rights & Human Welfare* 95; See also Andrew Fagan, 'Between God and Democracy' (2002) 2(2) *Human Rights & Human Welfare* 15

¹²⁵ Leszek Kolakowski, 'What Is Left of Socialism' (2002) 26 *First Things* 42

This section has considered inherent dignity in all humans qua human. This is the first core theme induced from the literature. It represents a sort of dignity *de jure*, in that it is almost a legal 'right' to dignity. Nevertheless, the utility of dignity still comes under scrutiny. One of the key criticisms is the conflation of the concept with liberty and autonomy.¹²⁶ This, as will be explained, is particularly so in a bioethical approach to dignity. It is the relationship between dignity and autonomy, and their conceptual conflation which forms the second core theme of dignity that will now be discussed.

Core Theme Two:

*Dignity and Autonomy*¹²⁷

A theme which is consistent across the literature in many disciplines is the idea that dignity is recognisable through autonomy – the freedom to make rational choices, and agency - the ability of persons to act on those choices. Says Joseph Raz: 'Respecting human dignity entails treating humans as persons capable of planning and plotting their future. Thus, respecting people's dignity includes respecting their autonomy, their right to control their future'.¹²⁸ It would appear from the literature that freedom to choose one's life-plan is essential to the identification of dignity. In the bioethical discipline, it is in discussions over morality and in medical ethics that dignity as autonomy often arises. The concept of dignity frequently adjoins the idea of autonomy and freedom of choice over treatment, over abortion and over death.¹²⁹

¹²⁶ Sandra Liebenberg, 'The Value of Human Dignity in Interpreting Socio-Economic Rights' (2005) 21(1) South African Journal on Human Rights 1, 5

¹²⁷ Whilst an exhaustive review of dignity and autonomy is not possible here, the reader is directed to material which provides much more thorough analysis of the two concepts. Here will be discussed some ideas from Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001), Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart: Oxford and Portland, Oregon 2009) 108 and Denise Réaume, 'Dignity, Choice and Circumstances' in Christopher McCrudden (ed), *Understanding Human Dignity* (OUP 2013) 539. The reader may also consider for further reading specifically in autonomy, certain works that share ideas with those presented here. Further exploration can be made of autonomy in theology and philosophy. In Jewish philosophy, autonomy is tied in with relationship to God as creator, and Kenneth Seeskin identifies the tensions in the Jewish Torah between the autonomy of individuals, and divine worship of God; K Seeskin, *Autonomy in Jewish Philosophy* (Cambridge University Press 2001). In Chapter 1 of that work, Seeskin's interpretations of autonomy in scripture are also tied in to Kantian philosophy, and he makes reference to Kant's understanding of autonomy throughout his work.

¹²⁸ J Raz, *The Authority of Law* (Clarendon Press: Oxford 1979)

¹²⁹ I.e. John Harris, *The Value of Life: An Introduction to Medical Ethics* (Routledge 1985). See also the so-called 'right to die' arguments in recent jurisprudence; R. (on the application of Nicklinson) v Ministry of Justice [2012] EWHC 2381 (Admin); *Pretty v United Kingdom* (application no. 2346/02) (2002) 35 EHRR 1; R. (on the application of Purdy) v Director of Public Prosecutions [2010] 1 AC 345. Bioethical iterations of dignity are termed

As mentioned in the first theme, above, dignity is recognisable in human beings as separate (or separable) from the animal kingdom, and this is visible in that we possess the freedom of agency and autonomous thought which animals lack. This might be termed a dignity of *empowerment* or of *capability*.¹³⁰ Our inherent dignity is apparent through our choices pertaining to a series of life-options. Capps indicates that we have rights to make autonomous choice founded on the dignity of empowerment.¹³¹

Charles Foster levels a critique on Beyleveld and Brownsword's idea of dignity as empowerment, which adopts Alan Gewirth's Principle of Generic Consistency (PGC). This theory in itself is based upon agency-facilitation¹³² Foster goes so far as to label Beyleveld and Brownsword 'the Autonomists', since, he believes that their work, based on the PGC, is ultimately pointing towards a conflation of dignity with autonomy.¹³³ Instead, it might more accurately be said that the view of dignity held by Beyleveld and Brownsword equates that human beings as agents possess dignity by the very fact that they are vulnerable beings with the capacity to make choices (autonomy). Having a capacity for autonomy is on this view what a person's dignity *actually* consists of.¹³⁴

by Beyleveld and Brownsword as 'dignity as constraint', in Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001).

¹³⁰ A particular example of this type of reasoning towards dignity is found in the 'capability approach', where human dignity is apparently found in the ability to choose certain 'functionings' in life. In this approach, it is essential to a finding of the presence of dignity that persons have the capability to select choices in life. As a proponent of this approach, which is not presented in this study in full, Martha Nussbaum considers that there are three notions of dignity; *respect*, *agency* and *equality*. See Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (CUP 2000). Nussbaum (whose theory of objectification is utilised in this study at Chapter 8) lists various capabilities, whilst Amartya Sen, declines to do so. See also A Sen 'Human rights and capabilities' (2005) 6(2) *Journal of Human Development* 151

¹³¹ Capps propounds that 'human beings have dignity when they can exercise autonomy', or where 'autonomy is protected by a series of rights which every human being has because they are a human being'; Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart: Oxford and Portland, Oregon 2009) 108. Capps specifically refers to the work of Beyleveld and Brownsword, who describe this form of human dignity thus: 'human beings are recognized not only as having the capacity to make their own choices, but also as being entitled to enjoy the conditions in which they can flourish as self-determining authors of their own destinies'. Quoted by Capps at 108, taken from Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001)

¹³² Foster summarises the PGC thus; 'The PGC is an agency-facilitating concept. It deems as rights whatever is needed to ensure true agency. There is an important reciprocity: unless X accepts the PGC's proposition that all agents have generic rights enforceable against X, X himself will not be entitled to eat the fruits of the PGC: one cannot have rights (the corollary of the PGC), without signing up to the PGC.' Charles Foster, *Human Dignity in Bioethics and Law* (Hart: Oxford and Portland, Oregon 2011) 63

¹³³ Ibid 62ff

¹³⁴ And so inherent dignity is represented by autonomy and agency.

However, a conflation of the terms dignity and autonomy, has led to criticism of the use of the term dignity by some medical ethicists and medical practitioners.¹³⁵ The literature considers dignity and autonomy to be *almost* synonymous, but is there any particular problem with counting them as *exactly* synonymous concepts? Neomi Rao, whose legal model of dignity is examined in Chapter 6 considers that autonomy and dignity are not one and the same, and that they may in fact conflict with each other. She cites Guy Carmi:

Autonomy refers to the ability of persons to create their own identity and in this way to define themselves. Dignity, by contrast, refers to “our sense of ourselves as commanding (attitudinal) respect.” Unlike autonomy, dignity depends upon intersubjective norms that define the forms of conduct that constitute respect between persons. That is why modern legal systems so often set autonomy and dignity in opposition to each other...¹³⁶

If dignity is understood as inherent and also exhibited through autonomous thought or action, what then of those who are unable to express autonomy? Willard Gaylin says that where autonomy and dignity are conflated, those who are unable to display autonomy through disability, infancy etc. have ‘...their position in the moral world [threatened]’.¹³⁷

A recent debate in constitutional law, between Connor O’Mahony and Emily Kidd White illuminates the problems with the conflation of dignity and autonomy.¹³⁸ O’Mahony concludes that autonomy and dignity are separate concepts, explaining that many cases have shown that one’s autonomy might be restricted for the benefit of the protection of their dignity.¹³⁹ O’Mahony takes an approach which is perhaps minimalist, but an analysis which is perhaps more appropriate from the realms of constitutional law, whilst Kidd White addresses

¹³⁵ I.e. R Macklin, ‘Dignity is a useless concept’ (2003) 327 British Medical Journal 1419

¹³⁶ Guy Carmi, ‘Dignity – The Enemy From Within: A Theoretical And Comparative Analysis Of Human Dignity As A Free Speech Justification’ (2007) 9(4) University of Pennsylvania Journal of Constitutional Law; See Neomi Rao, ‘Three Concepts of Dignity in Constitutional Law’ (2011) 86(1) Notre Dame Law Review 183, 219 at [n 149]. Carmi is saying that dignity and autonomy are at times in opposition to one another, but he is referring to dignity as a communitarian iteration, or as a collective dignity. This explanation by Carmi suggests that dignity can have a communitarian focus, and is not limited to, or indeed is not essentially, an individualistic concept. Rao moves the inherent dignity concept into the communitarian concept by explaining that a number of scholars take this view of autonomy being ‘at odds’ with dignity; Ibid 219. Rao identifies that ‘...the inclination in Germany, France or South Africa is to separate dignity from autonomy in order to expand the legal conception of dignity and give it a more positive, community-based meaning’.

¹³⁷ Willard Gaylin, ‘In Defense of the Dignity of Being Human’ (1984) 14(4) The Hastings Center Report 18, 20

¹³⁸ Conor O’Mahony ‘There is no such thing as a right to dignity’ (2012) 10(2) International Journal of Constitutional Law 551; Conor O’Mahony ‘There is no such thing as a right to dignity: a rejoinder to Emily Kidd White’ (2012) 10(2) International Journal of Constitutional Law 585; Emily Kidd White ‘There is no such thing as a right to dignity: a reply to Conor O’Mahony’ (2012) 10(2) International Journal of Constitutional Law 575

¹³⁹ O’Mahony Ibid (1) 555ff

philosophical shortcomings in O'Mahony's approach. She finds no issue with accepting *some* collusion between the two concepts.

O'Mahony seeks a solidified, unified definition of dignity as an inherent concept, where autonomy is clearly separated as not being one and the same as dignity, but a right which derives from the presence of inherent dignity in all persons. Kidd White, alternatively, views dignity with a philosophical guise; and propounds that dignity does not have to be clearly defined as a singular concept, unable to be separable and interfered with. O'Mahony's approach and intention – to enable human dignity to be recognisable as a solid concept, without so much fluidity that it is hard to grasp, (for which it is so often criticized), from a constitutional law perspective, is in keeping with the methods of this thesis.¹⁴⁰

Moreover, in dignity's relation to autonomy, O'Mahony gives a descriptive statement – that dignity is inherent to all persons, with a normative corollary that therefore, every human being is entitled to rights 'on the basis of equal treatment and respect'.¹⁴¹

Summary and Next Chapter

This chapter presented the idea of dignity as it is studied in multiple disciplines, to provide two central themes of human dignity. It has also been established in this chapter that dignity is often conflated with other terms, particularly with 'autonomy'. Whilst it is acknowledged that autonomy is integral to the concept of human dignity, it is not dignity in isolation. It will be asserted that dignity should not be reduced merely to autonomy – the two are separate, or rather separable concepts. Given the richness of the idea of dignity, it is asserted that dignity must be viewed as more than one concept. It must consist of various elements. As such, it has to exist as more than a singular definition. It must be fluid and malleable.

The two central themes here presented are cumulative in nature vis-à-vis human rights, as will be seen in the ensuing chapters; it is because dignity is recognised as inherent, that we see the dignity represented in protected autonomous thought and action. As we next explore the legal explication of dignity, these two foundational ideas about dignity will be expanded

¹⁴⁰ Emily Kidd White, 'There is no such thing as a right to dignity: a reply to Conor O'Mahony' (2012) 10(2) International Journal of Constitutional Law 575 also seems to champion an understanding of the fluidity and generality of the concept of human dignity, which forms the underpinnings for a universalistic foundation of human rights, and this is certainly the approach of Leslie Henry, in Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169

¹⁴¹ Conor O'Mahony 'There is no such thing as a right to dignity' (2012) 10(2) International Journal of Constitutional Law 551(2) 586

upon, and further themes considered. The next chapter identifies the legal usage of human dignity in international law and human rights theory and in the chapter following that, addresses a specific example of dignity's application in human rights jurisprudence, in Article 3 of the ECHR. It will be apparent that although human dignity has always had a somewhat ethereal nature, it is also a bedrock idea in human rights theory and in international law.

4. HUMAN DIGNITY IN HUMAN RIGHTS THEORY AND INTERNATIONAL LAW

This chapter will consider human rights theory,¹⁴² before exploring the prescriptive nature of human dignity in international human rights law. It begins by asking the question ‘what are human rights?’ This is an essential question to ask and answer, before specifically locating human dignity in legislative provisions, so that we have a core understanding of the ethos behind the possession of certain rights and entitlements that are then framed in various international conventions. Those conventions, as will be presented, are founded upon the idea of human dignity.¹⁴³ The ultimate purpose of this chapter is to affirm the statement that ‘...human dignity is the rock on which the superstructure of human rights is built’.¹⁴⁴

What are Human Rights?

Human rights can also be termed as ‘natural’ rights.¹⁴⁵ Natural rights ‘are thought to exist independently of social recognition and enforcement’, and exist ‘by virtue of our status as human beings...independent of particular circumstances and do not depend on any special conditions.’¹⁴⁶ Human rights, whatever they may *be* descriptively, appear to have an emotive, definite appeal, and it might be asserted, possess some innate authority, which is almost self-evident. They are the driving force behind domestic legislation, and in the UK, the Human Rights Act 1998 provides domestic application of European Convention principles of human rights protection. Rights, as will be seen in the international human

¹⁴² There will be a non-exhaustive presentation of some central theories of human rights, particularly concerned with natural rights, and a natural legal perspective to human rights.

¹⁴³ It will be recognised that a number of conventions are borne out of the original Universal Declaration on Human Rights of 1948. The subsequent provisions will be included here in order to convey the message that dignity founds international efforts to protect human rights, and a fortiori, human dignity.

¹⁴⁴ Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 13

¹⁴⁵ Here the terms natural and human rights will be interchangeable. Natural rights are also sometimes termed ‘moral rights’; i.e. David Lyons, ‘Utility and Rights’ in Jeremy Waldron (ed), *Theories of Rights* (OUP 1984) 110ff.

¹⁴⁶ Lyons *ibid* 111-112

rights law which follows, transcend cultures and religious groups.¹⁴⁷ However, the basis or 'nature' and scope of human rights is an issue of contention.¹⁴⁸

Are human rights a creation of society or law, or do they have an *a priori* existence? Historically, and specifically in Jewish tradition, rights were 'endowed' upon individuals. Human rights are decreed by God as opposed to the state.¹⁴⁹ In line with the *Imago Dei* theory of human dignity, in the Jewish culture, human life is deemed to be sacred, and the preservation of human dignity is supplemented by the rules and regulations of the Jewish law contained in scripture and other historical writings.¹⁵⁰ Such ways of understanding rights as being natural rights, not earned but endowed upon humanity align with natural law theory. The opposing jurisprudential discipline, legal positivism can be seen in the work of Jeremy Bentham, who famously called the idea of rights 'nonsense upon stilts'.¹⁵¹ Bentham saw rights as being 'a *child* of the law'; borne out of legislative provision.¹⁵² Fagan says: 'From a legal positivist view legitimate human rights are those which have been legally recognised and codified. Human rights exist as legal rights or not at all.'¹⁵³

HLA Hart posited an opposing view, which '...takes the form of seeing human rights as, in effect, *parents of law*: they motivate specific legislations.'¹⁵⁴ In Hart's view, as here enunciated by Amartya Sen, human rights can therefore be seen as a product *of* law, or as a motivation *for* law. Fagan explains the distinction between the two - of legal positivism: '...human rights depend upon law for their existence and their application.'¹⁵⁵ Describing the contrasting natural law position on human rights: '...natural law posits the existence of forms of justice and rights which exist *independently* of any tangible political or legal institution or configuration'.¹⁵⁶

¹⁴⁷ This does not account for cultural relativity, however, which necessarily dictates that not all cultures would provide the same protections as others, although maintaining a commitment to the protection of human rights generally.

¹⁴⁸ See Andrew Fagan, *Human Rights: Confronting Myths and Misunderstandings* (Edward Elgar 2009). Fagan suggests that some misunderstandings of human rights are borne out of the relation between the basis and scope of human rights.

¹⁴⁹ As originally clear from the Torah – the first five books of the bible.

¹⁵⁰ See S Spero, *Morality, Halakka and the Jewish Tradition* (Yehhiva University Press 1983); N Lamm, *The Good Society: Jewish Ethics in Action* (Viking Press 1974) for further study.

¹⁵¹ Jeremy Bentham, *Anarchical Fallacies* (Headline Series: New York 1998)

¹⁵² Ibid

¹⁵³ Andrew Fagan, *Human Rights: Confronting Myths and Misunderstandings* (Edward Elgar 2009) 32

¹⁵⁴ Amartya Sen, *The Idea of Justice* (Penguin 2009) 363

¹⁵⁵ Andrew Fagan, *Human Rights: Confronting Myths and Misunderstandings* (Edward Elgar 2009) 30

¹⁵⁶ Ibid 31

Therefore we can either believe that human rights exist because a legal provision/s says that they exist, and adopt a positivist legal perspective, or, as is preferred in this study, adopt a natural law perspective, and consider that the law is created to fulfil a commitment to an ideal that both supersedes and pre-dates the written law. In this way, we seek an approach to human rights which relies upon an inherent value in humanity which requires protection; human dignity.

Rights and Dignity

How human dignity and human rights relate in a legal sense is the subject of concern in the remainder of this chapter. Although we can see that the term human dignity is to be found in the letter of the international law, it is important to consider the concepts underlying the written law. It would exceed the scope of this thesis to consider the moral and philosophical underpinnings of human rights, so there has to be an element of appropriate selectivity in how we consider them. This analysis of some concepts of human rights, aimed at identifying human dignity within, will enable an understanding of the place human dignity has within the written law. We begin by considering two commonly regarded theories of rights, known as the Will and Interest theory respectively.¹⁵⁷

In modern legal theory and political science there are principally two theories of rights, widely known as Will Theory and Interest Theory. The different theories illustrate the effect that rights have between competing parties.¹⁵⁸ Will theory (also named 'choice theory' in some circles)¹⁵⁹ operates on the premise that a person possesses a right only if they would have the ability to waive it or to exercise it. Interest theory on the other hand propounds that if a person has a particular interest that another party be held subject to a duty to protect that interest, then they possess the right(s). The two theories are marked by the contrast in requirement of human agency in autonomy. In the Will theory, autonomy is vital to a realisation of the right, while with the interest theory it matters not whether the person has autonomy to determine their own interests and thus their rights – they possess them nonetheless. Now how would these theories relate to human dignity – do they support or conflict with the idea of dignity?

¹⁵⁷ Whilst we do not necessarily require the use of these theories in the application part of this thesis, it is pertinent to briefly explain the premise of each. It can be seen that rights call upon dignity for their authority.

¹⁵⁸ A discussion of rights leads to consideration of when rights are in dispute, and this is discussed further on.

¹⁵⁹ I.e. Andrew Fagan, *Human Rights: Confronting Myths and Misunderstandings* (Edward Elgar 2009) 14ff

The various concepts of dignity which have been explored in the preceding chapter, led us to an understanding of dignity being inherent in all human beings, and also consisting of autonomy. Both theories of rights express and reflect upon what the inherent capacity of dignity is which is the source of those rights.

So far we have talked about rights, but not about duties. This leads to a consideration of a theory of rights developed by Hohfeld, who provided a schema of natural rights, and how *right* interrelates with *duty*. Hohfeld usefully simplified the idea of natural rights in the 'Hohfeldian Schema'.¹⁶⁰ The schema is helpful to identify where competing interests interact. Hohfeld sets out that there are four types of right attributable to human beings; a claim-right; a liberty; a power or an immunity. A claim-right consists of a *duty* of one party to allow the other party to do a certain thing. A liberty allows a party to do something, or to not do something without a duty being placed on the other party. The possession of a power alters the legal rights of the other party. If a party has immunity from that power, this means that they are not subject to the former's power.

So to assert a right involves a three pronged relationship between a person, an 'act-description' and another person, as per the example in Appendix F. In the present context of the sociology of prostitution, the dignity of the sex worker versus the dignity of the client might be considered in future research. In that respect, it could be useful to utilise the Hohfeldian schema to indicate which rights each party retains in the prostitution encounter. Hohfeld gives us an indication of how rights might be apportioned between persons in an exchange of interests.¹⁶¹ Such a discussion may lead us to consider where rights conflict.

In the context of ECHR rights and the European Court of Human Rights, Alexander Green writes on two opposing theories on the meeting of two separate rights in the courtroom, known as 'conflict theory' and 'absolute theory'. To view opposing rights as in conflict, is for Green the incorrect way to view the theory of human rights – that is 'conflict theory'. Green's point is that today's 'language of human rights is abused'¹⁶² and that it should be recognised that (ECHR) rights cannot conflict. This is the 'absolute' theory of rights. The absolute theory of rights holds that when two (seemingly) opposing rights meet, they do not technically conflict, as each right maintains its own individual importance and validity. No right nullifies

¹⁶⁰ Taken from Wesley Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning (1913) 23(1) The Yale Law Journal 16

¹⁶¹ Such an indication may be relevant when considering the exchange of interests between the sex worker and the client in the prostitution encounter.

¹⁶² Alexander Green, 'An Absolute Theory of Convention Rights: Why the ECHR Gives Rise to Legal Rights that Cannot Conflict with Each Other' (2010) 16 UCL Jurisprudence Review 75, 96

another right, but some take precedence over others. It is the Court's job to determine which right takes *precedence* in the situation.

Green's argument against a conflict theory is based on the perceived erroneous understanding of there being ultimately a *right* answer to a legal dispute of rights. It is the European Court of Human Rights' focus on achieving the *right* answer in its analysis of rights clashes which is problematic. Green agrees with the integral core of human rights; their very nature contending with such a 'conflict theory' approach: '...ECHR rights are a species of moral rights...to talk of a right answer being reached by the ECtHR is to invoke moral absolutism'.¹⁶³

A theory of rights for this study

In this short encounter with some theories of rights, it has been established that there can exist rights, and correlating duties, liberties or powers. Rights can exist independent of autonomous thought or action to see them enforced. They are self-evident, natural and precede the written law. These premises about human rights inform the ensuing chapter and remainder of the thesis. Human rights, as natural and applicable to all human beings, are based on the premise of the dignity of the individual.

In these descriptions of human rights, human beings possess such rights merely by virtue of being human. They are not essentially given to people by the state, and they cannot thus be removed by the state, or, indeed by any other private individual either.¹⁶⁴ This is reminiscent of the concept of human dignity, as an inherent aspect of the human race,¹⁶⁵ as Steve Foster explains the theoretical links between the two concepts, with reference to Article 3 of the ECHR;

...protecting human rights is essential to maintaining the dignity and integrity of the human being. Thus human rights uphold the basic dignity of the individual as a human being; every human being, because they *are* human [qua human], is said to deserve humane treatment, and they should not, therefore, be subject to torture or other ill-

¹⁶³ Ibid 86

¹⁶⁴ See Carlos Santiago Nino, *The Ethics of Human Rights* (Clarendon Press Oxford 1991). There is an in-depth discussion of the legal enforcement of positive morality where the immorality of an act justifies the state's intervention to prevent it; 129ff

¹⁶⁵ According to the minimum core, this is the ontological claim to dignity; Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655, 679; or in Henry's schema, equality as dignity; Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169. These are considered in Chapter 6.

treatment, or to slavery and servitude, as such treatment is an affront to human dignity.¹⁶⁶

So we can establish that dignity and human rights may have a synonymous existence in humanity, as there are inextricable links between the two, beyond the letter of the law, as above.¹⁶⁷ When we relate human dignity to rights, in the form of natural or human rights, we see that it can exist in different ways. It is both recognised and protected in different ways, too. Where human dignity is socially and relationally instigated, as in collective virtue as dignity or in the relational claim in the minimum core, it is dependent upon the affirmation of dignity by other individuals. Says Ritschl, human dignity is 'a notion which precedes Human Rights, i.e.....human rights are a juridical concretization of the more general concept of Human Dignity', in spite of the fact that 'human dignity as a concept belongs to a pre-ethical, pre-political and pre-judicial realm'.¹⁶⁸

From Natural to Legal Rights

What codification of rights and dignity achieves is the movement of rights from being natural, to legal rights. Law makes prescriptive rights available. In contrast to natural rights, legal rights are accrued to individuals by the state. They provide a structure for enforcement that natural rights do not present per se:

...while legal rights have a clear correlate in the world, in legal texts and the willingness of legal officials to enforce them through various enforcement procedures, no such clear correlate exists for moral rights.¹⁶⁹

Thus, rights can be made 'legal' by the introduction of legislative protection:

...legal rights may be thought of as a variety of moral rights: they are the moral rights that we have as a result of the existence of legal institutions such as bodies of publicly ascertainable rules and courts committed to the principle of formal justice.¹⁷⁰

¹⁶⁶ Steve Foster, *Human Rights & Civil Liberties* (2nd edn Pearson Longman 2008) 11

¹⁶⁷ Glensy has also discussed the idea that there is a right to dignity, with several different approaches to the theory; an affirmative and negative approach, a proxy approach and a rhetorical approach; Rex Glensy, 'The Right To Dignity' (2011) 43(65) *Columbia Human Rights Law Review* 142

¹⁶⁸ Ritschl in Kretzmer and Klein op cit 92

¹⁶⁹ Brian Bix, *Jurisprudence: Theory and Context* (Thomson Sweet & Maxwell) 125-126

As Simmonds suggests, rights may 'possess peremptory force'. He provides the example of the notion that all people should have paid holidays: 'If people have a Right to a paid holiday, it matters not whether the notion is a good or bad one, the right takes precedence'.¹⁷¹ In another example:

...asserting the existence of a right to watch game shows...seems to leave no room for further debate about the permissibility of my action: if I have a right to do it, the action is permissible regardless of the balance between competing goods and bads. [sic]¹⁷²

Human Dignity in International Human Rights Law

Beyleveld and Brownsword class human dignity as empowerment or as constraint, with the former having a 'background' role, and the latter a 'foreground' one. Of dignity as empowerment, they say it has a '...background role typically assigned to human dignity in the founding international instruments of human rights.'¹⁷³

In the years following the atrocities of Nazi Germany, the dignity of human beings came into sharp focus. Ed Bates provides a usefully concise overview of the history of human rights, which details the development of rights in international law both pre- and post-Second World War.¹⁷⁴ This 'policy-oriented jurisprudence'; policy which responds to atrocities in the formulation of international human rights law, seems to have been the motivational means by which our modern international law on human rights, and the UDHR and European Convention in particular, came into play.¹⁷⁵ But the inspiration behind this revolutionary legislation was not based upon the need to provide individuals with rights and entitlements per se, but to protect something deemed very important. The severe attack upon man's dignity that the Nazis' 'final solution' entailed, seems, historically to have resulted in a protective legislative response and greater recognition of man's inherent worth:

¹⁷⁰ Nigel E Simmonds, *Central Issues in Jurisprudence* (2nd edn Sweet and Maxwell 2002) 256ff

¹⁷¹ Ibid 256

¹⁷² Ibid 256-7. So Simmonds suggests that morality ceases to be the principal consideration for the possession of the right. If it is legitimate, the value of the right matters not; it is permissible.

¹⁷³ Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 11

¹⁷⁴ In Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran (eds) David Harris (cons ed), *International Human Rights Law* (OUP 2010) 17. See also Christoph Goos, 'Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany' in Christopher McCrudden (ed), *Understanding Human Dignity* (OUP 2013) 79ff

¹⁷⁵ See Siegfried Wiessner, Andrew R. Willard, 'Policy-Oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity' (1999) *American Journal of International Law* 316

[in post-second WW international law] intrinsic human dignity is a seminal idea that acts as the background justification for the recognition of human rights and as a source of the fundamental freedoms to which all humans (*qua* human) are entitled. In this context, human dignity as empowerment (specifically, the empowerment that comes with the right to the conditions in which human dignity can flourish) is the ruling conception.¹⁷⁶

Thus, human dignity, here referred to as dignity as empowerment, is tied in with rights. In the same vein, the philosopher, Jacques Maritain, in a statement echoing the Kantian categorical imperative, linked the concept of dignity with rights, in 1951:

...the human person possesses rights because of the very fact that it is a person, a whole, a master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of the natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to man because of the very fact that he is man.¹⁷⁷

Maritain had an influential role in the drafting of the Universal Declaration on Human Rights in 1948¹⁷⁸. Whilst it is not particularly certain how dignity became a central theme of that Declaration, Maritain's views were certainly toward a protection of the dignity of the person. We know from the broad concepts of dignity, that personhood is an indicator of inherent worth, sometimes named 'dignity'. Autonomy is prevalent in Maritain's statement; 'master of itself'. Autonomy in the international law pertaining to human rights, is, as was suggested in Chapter 3, human dignity *de facto*.

Dignity is seen as a universalistic basis of value for human beings, being non-religious and non-political, and so able to be culturally relative. If dignity is a shared value across cultures, then societies build upon that core 'dignity' value in the creation of their own legal rights, obligations and protections.¹⁷⁹ Therefore, in human dignity, we find a bedrock upon which culturally specific laws can be built. Dignity can be a shared value that need not prevent culturally specific realisations of individual rights.

¹⁷⁶ Deryck Beylerveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 11

¹⁷⁷ J Maritain, *The Rights Of Man And Natural Law* (1951) 65

¹⁷⁸ Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655, 662

¹⁷⁹ Rex Glensy, 'The Right To Dignity' (2011) 43(65) *Columbia Human Rights Law Review* 142

The preamble to the Universal Declaration on Human Rights (UDHR) of 1948 provides:

‘Whereas recognition of the **inherent dignity** and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...’

And at Article 1:

‘All human beings are born free and equal in **dignity** and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’.

As per the first of the central themes discussed, the preamble speaks clearly of dignity being inherent, and thus not accorded to human beings by the state. Human beings are members of a ‘human family’, which again provides consideration that humans are separable from the rest of nature. Article 1 refers to human beings having been ‘endowed’ with reason and conscience from birth, alluding to the endowment of dignity by God, as per the Jewish/Christian traditions. Also stated clearly is the proviso of equality. This is fundamental, so that all members of the human race possess the same *quantity* and *quality* of dignity.

The International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR) both contain the underlying principles of human dignity in their respective preambles, for example, in the ICCPR:

‘...recognition of the **inherent dignity** and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the **inherent dignity** of the human person...’¹⁸⁰

A number of international conventions and charters contain references to the upholding of the principle of human dignity, particularly in reference to the prohibition of torture and inhuman or degrading treatment or punishment.¹⁸¹ The following are other such examples of the use of the term dignity in international law, which indicate the universality of the concept in law making:

¹⁸⁰ Preamble to The International Covenant On Civil And Political Rights (1966)

¹⁸¹ See Moeckli D, Shah S, Sivakumaran S, (eds) David Harris (cons ed), International Human Rights Law (OUP 2010) 209

“freedom, equality, justice and **dignity** are essential objectives for the achievement of the legitimate aspirations of the African peoples...”¹⁸²

“Based on the faith of the Arab nation in **the dignity of the human person** whom God has exalted ever since the beginning of creation and in the fact that the Arab homeland is the cradle of religions and civilisations whose lofty human values affirm the human right to a decent life based on freedom, justice and equality...”¹⁸³

‘The American peoples have acknowledged the **dignity of the individual**...’¹⁸⁴

‘The **dignity** of man is **inviolable**. To respect and protect it shall be the duty of all public authority’¹⁸⁵

These examples demonstrate the universal nature and use of the concept of dignity, over the course particularly of the 20th century, from North America, to Europe, Africa and the Middle East. This is so despite many different religious and social belief systems, political stances and ideologies, economies and experiences of war and adversity. The concept of dignity is found in the wording of conventions on human rights, as above, but also in national conventions and other socio-economic legal instruments, not only in Western jurisdictions, but in Africa,¹⁸⁶ the Middle East, Asia and further afield. Anne Hughes points out that dignity ‘began appearing as a concept in constitutions in the first half of the [twentieth] century.’¹⁸⁷ She cites Mexico,¹⁸⁸ Weimar Germany,¹⁸⁹ Finland,¹⁹⁰ Portugal,¹⁹¹ Ireland,¹⁹² Cuba,¹⁹³

¹⁸² Preamble To The African Charter On Human And Peoples’ Rights (1981)

¹⁸³ Preamble To The Arab Charter On Human Rights (2004)

¹⁸⁴ Preamble To The American Declaration Of The Rights And Duties Of Man (1948)

¹⁸⁵ Article 1, Section 1 German Basic Law

¹⁸⁶ Hughes provides an extensive discussion of the use of dignity in South African jurisprudence which exceeds the scope of this thesis; Anne Hughes, *Human dignity and fundamental rights in South Africa and Ireland* (Pretoria University Press 2014) 49-50. In a similar context, the reader is directed to discussion on the African philosophical concept akin to dignity, of Ubuntu. See, for example Y Makgoro, ‘Ubuntu and the law in South Africa’ (1998) 1(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* <http://www.ajol.info/index.php/pelj/article/viewFile/43567/27090> accessed 1st August 2015. See also T Metz, ‘Dignity in the Ubuntu tradition’ in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 310ff

¹⁸⁷ Hughes *ibid*

¹⁸⁸ Political Constitution of the United Mexican States 1917 (amended 1946), Art 3(II)(c),

¹⁸⁹ Constitution of the German Reich 1919, Art 151

¹⁹⁰ Constitution of Finland 1919, Art 15

¹⁹¹ Political Constitution of the Portuguese Republic 1933, Art 45

Spain¹⁹⁴ and Costa Rica¹⁹⁵ all as jurisdictions which considered dignity a vital ingredient to national identity.¹⁹⁶

Dignity is said to 'inform' rights¹⁹⁷, and therefore the human rights which are codified by the state in legislation are based upon the concept of dignity. As P Carozza states, human dignity in international law is 'a basic ground of commonality'.¹⁹⁸ Human dignity 'is the source of human rights and hence is anterior or above the state...[W]hat follows, consequently, is that in the right to dignity is embodied the notion that it is beyond the reach of the state.'¹⁹⁹ Schachter portrays something similar: 'As a philosophical statement, the proposition that rights derive from the inherent dignity of the person is significant. It clearly implies that rights are not derived from the state or any other external authority'.²⁰⁰

Glensy states, again from a US Constitutional law perspective; '...What has...emerged from the domestic legal framework is a dense but very confused picture of the role and meaning of human dignity within the ambit of legal rights'.²⁰¹ Statman elaborates; '...on the one hand, dignity is assigned supreme importance, but on the other, it has no clear reference.'²⁰² In Ritschl's estimation, human dignity should not be 'squeezed into quasi legal terminology as though [it] were not the platform or frame of reference for human dignity but were a summary of human rights in itself'.²⁰³

¹⁹² Constitution of Ireland 1937, Preamble, 5th para

¹⁹³ Constitution of the Republic of Cuba 1940, Art 20

¹⁹⁴ Charter of the Spanish People 1945, Arts 1 & 25

¹⁹⁵ Political Constitution of the Republic of Costa Rica 1949, Art 56

¹⁹⁶ She explains that among others, the religious influence of the Catholic Church had a part to play in this, Ibid 50

¹⁹⁷ Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) European Journal of International Law 655, 681

¹⁹⁸ Paolo Carozza, 'Human dignity and judicial interpretation of human rights: a reply' (2008) 19(5) European Journal of International Law 931

¹⁹⁹ Rex Glensy, 'The Right To Dignity' (2011) 43(65) Columbia Human Rights Law Review 142

²⁰⁰ Oscar Schachter, 'Human Dignity as a Normative Concept' (1983) 77(4) The American Journal of International Law 848, 853

²⁰¹ Rex Glensy, 'The Right To Dignity' (2011) 43(65) Columbia Human Rights Law Review 142

²⁰² Statman in Kretzmer and Klein op cit 227

²⁰³ Ritschl in Kretzmer and Klein op cit 93

As Beyleveld and Brownsword illustrate, it is upon reflection of these international legal instruments that several ideas of what human dignity is, form. Every individual possesses dignity, equally and without question, and this inherent dignity forms the foundation for the possession of human 'rights'.²⁰⁴ As is pointed out in their work, human dignity forms the basis for the human rights legislation and for human rights protection in general, but, 'having done its work in grounding human rights, then slips into the background.'²⁰⁵

Can Dignity be a Legal Concept?

Given the essential reference human dignity receives in these important international conventions, and that it is apparently crucial to a finding that we as humans are deserving of rights, we might ask; "Does dignity have some legal standing in its own right, aside from the rights it informs?" It is arguable that no pragmatic and theoretically sound legal concept of dignity has yet been propounded and agreed upon, and has questionably not been sufficiently analysed within legal scholarship.²⁰⁶ It has been said that human dignity is not a legal concept at all, but may exist figuratively; as discussed in Chapter 3, Ritschl, for one, presents a compelling analysis of human dignity, providing arguments against its legal status.²⁰⁷ Equally, it has been said that perhaps dignity is merely a virtue, rather than a legal concept or a right in itself.²⁰⁸

Judge Christian Byk explains in the opening sentence to his article assessing the legal utility of dignity, that the concept did not appear until after the Second World War as a legal reference. As such, he calls into question its utility as a legal concept, stating, 'The broad definition and opposed interpretations create legal uncertainty that may well prejudice the utility of the concept of human dignity as well as our trust in the legal system...However, my

²⁰⁴ Deryck Beyleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 13

²⁰⁵ Ibid

²⁰⁶ This is a point made by Denise Réaume, in D Réaume 'Indignities: Making A Place For Dignity In Modern Legal Thought' (2002) 28 *Queens Law Journal* 61, 62

²⁰⁷ In Kretzmer and Klein op cit

²⁰⁸ Meyer discusses the recent study of the 'virtues', and asserts dignity as one thereof. He posits 4 types of dignity – 'social dignity'; 'special status as human being'; 'a sense of dignity' and 'the virtue of dignity'; Michael Meyer, 'Dignity as a (modern) virtue' in Kretzmer and Klein op cit 87ff

view is that all these difficulties, although very real, are not obstacles that prevent us from benefiting from the concept of human dignity.²⁰⁹

Summary and Next Chapter

This chapter has considered the concept of human rights and some theories which present rights and duties, liberties and powers. Human rights are natural or 'moral' rights, independent of legal precedent, but they also exist as prescriptive legal rights. It has been discussed that underpinning the concept of human rights is the idea of human dignity. Dignity appears to inform and ground moral/natural rights, and thereby directs legal rights through international conventions protecting individual rights and entitlements in civil liberties and also in socio-economic rights. More explicitly, human dignity, as it has been deduced in Chapter 3 to consist of two central themes; inherence in all humanity and as autonomy, is at the heart of international human rights theory and law.

In the next chapter, we focus in to a greater degree on one particular aspect of human rights and human dignity. We will explore dignity within rights in the 'European' context, with a focus on Article 3 of the European Convention on Human Rights, and specifically inhuman and degrading treatment. As will be seen, Article 3 and its jurisprudence²¹⁰ will further indicate the veracity of dignity as a normative legal concept. It will also become apparent that another theme of dignity begins to present itself; that is the integrity of the person, which might be termed personal inviolability.

²⁰⁹ Judge Christian Byk, 'Is human dignity a useless concept? Legal perspective' in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 363

²¹⁰ The jurisprudence of Article 3 vis-à-vis its violation is the subject of Chapter 9.

5. HUMAN DIGNITY IN ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

As a continuation of the previous chapter's examination of human rights theory and dignity as it appears foundational to international human rights law, here there will be an exploration of judicial treatment of the concept of human dignity within the European Convention on Human Rights and Fundamental Freedoms 1950, (ECHR) specifically in Article 3 ECHR cases. As has been highlighted by Jean-Paul Costa, whilst dignity is given a foundational position in many international instruments on human rights, and in the UDHR, as discussed in the preceding chapter, in the ECHR at least, there is no mention of the concept of dignity.²¹¹ Thus, this study seeks to locate the idea of dignity within the Articles themselves, and for the purposes of this study Article 3 is adopted.

The chapter will demonstrate through its favourable judicial recognition and protection, that human dignity can be a judicially recognised, normative concept, and justifiably modelled in IPA dignity in the chapters that follow this. It will also demonstrate that there needs to be a more precise breakdown of dignity violation for the purposes of this study, than that which is given in the Article 3 jurisprudence, which calls for the model of IPA dignity to meet this need. Throughout the chapter, as the interpretations of this provision are examined utilizing the judgments of the European Court of Human Rights ("ECtHR" or "Strasbourg court"), the interpretative links between the violation of human dignity and the prohibition of IDT will be explored. There will be two sections examining human dignity and Article 3 ECHR.

This first section identifies the concept of human dignity in judicial interpretation of degrading treatment in, inter alia the landmark case of *Pretty v United Kingdom*.²¹² Jurisprudence pertaining to Article 3 of the ECHR demonstrates judicial recognition of, and legal authority accorded to, human dignity in human rights case adjudication. This further justifies the ensuing construction of the IPA human dignity model. The second section, in Chapter 9 will analyse violation of Article 3 and compare to dignity violation by identifying the respective forms of dignity violation in the respective cases, and tying these to the relevant elements of IPA dignity that are violated by the Article 3 violation. Firstly, in this section, before the case

²¹¹ See Jean-Paul Costa, 'Human Dignity in the Jurisprudence of the European Court of Human Rights' in Christopher McCrudden (ed), *Understanding Human Dignity* (OUP 2013) 394

²¹² *Pretty v United Kingdom* op cit

law is examined, the Article is introduced vis-à-vis its constituent elements with consideration of some pertinent issues that apply.

Article 3 of the ECHR

Article 3 is adopted because it is a right which is non-derogable. This means it is an absolute right, which cannot be set aside even in times of war or national emergency. It is also adopted because it is a protective right, safeguarding persons from inhuman and degrading treatment. The term 'inhuman' points towards the relevance of the Article where we are examining human dignity. The Article reads as follows:

'No one shall be subject to torture or to inhuman or degrading treatment or punishment.'

As can be seen, the Article consists of three elements. The first element is torture. This has been described as 'deliberate inhuman treatment causing very serious and cruel suffering'.²¹³ The threshold for proving torture in a claim requires demonstration of an especially severe degree of pain and suffering, coupled with a specifically deliberate set of actions. The second and third elements are inhuman and degrading treatment (IDT).

The two are often referred to in judgments as one element, as will be seen. The level of pain and suffering required to prove IDT differs from torture, as will be explained in what follows. Here, degrading treatment will specifically be separated from inhuman treatment, in order to demonstrate the courts' understanding of treatment which diminishes human dignity.

The leading case defining torture and IDT was *Ireland v United Kingdom*. This case concerned treatment by officials of the state of the United Kingdom towards suspected IRA terrorists, which consisted of the use of 'the five techniques'; wall-standing, hooding and deprivation of sleep, subjection to noise and deprivation of food. In spite of the circumstances surrounding the detention and treatment of the suspects; that being what the British government contended, a state of emergency affecting the life of the nation, no derogation could be made from Article 3, an absolute right. Importantly in this case, the Court of Human Rights determined the nature of treatment or punishment which would amount to torture, or IDT.

²¹³ *Ireland v United Kingdom* (1979-80) 2 EHRR 25

Specifically, regarding inhuman treatment, it held that the techniques caused intense physical and mental suffering and also led to acute psychiatric disturbances during interrogation, and thus amounted to inhuman treatment.²¹⁴ Secondly, the techniques were held to be degrading, in as much as they 'aroused in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance'.²¹⁵ The Court also determined that torture would constitute 'deliberate inhuman treatment causing very serious and cruel suffering'.²¹⁶

This describes treatment which will be cruel and barbaric, lacking in human qualities perhaps, but with the additional contribution of prolonged and deliberate suffering that is exceptional. The Court decided that on the facts no torture had been committed against the detainees, but IDT had been applied to them, and therefore the United Kingdom was in breach of Article 3:

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.²¹⁷

Here, our focus is upon the concept of degrading treatment, because it is in judicial comment regarding this specific element of Article 3 that the court speaks of the diminution of human dignity, and the debasement of the individual. This is important for this study, since we are concerned with judicial treatment of the concept of human dignity specifically, as a means of providing further legal/normative justification for its modelling in IPA, later. Before exploring the case-law to specifically locate dignity terminology, first some background as to the operation and enforceability of Article 3.

²¹⁴ Ibid [167]

²¹⁵ Ibid

²¹⁶ Ibid

²¹⁷ Ibid

The Possibility of Self-Infliction

What is the situation where the perpetrator of an Article 3 violation is the victim also? The court has not explicitly dealt with the applicant being the source of their own degrading treatment. It might be reasonable to ‘treat oneself’ in a certain manner that is necessarily harmful to oneself, say through substance abuse.²¹⁸ The concept of protecting one’s own dignity arose in the controversial dwarf-throwing case.²¹⁹ In that case, the court prohibited the practice of dwarf-throwing, which necessarily meant that for Mr Wackenheim, the opportunity to earn a living from the practice was terminated. Mr Wackenheim may have claimed that his dignity was intact, and that the activities represented no such undignified ‘treatment’, but the court held that his own dignity was violated by the activities.

In another continental case,²²⁰ the German Federal Administrative Tribunal stated that strip-tease shows, where the stripper could not see or engage with the audience to which she performed, represented an infringement upon her dignity. This decision came even in spite of the apparent voluntariness of the actions of the stripper in question. In respect of treatment, the self-objectification demonstrated here was sufficient to violate the dignity of the stripper and was unconstitutional.

In the unreported case of *Tremblay*²²¹ the European Court heard a case of alleged forced prostitution in unusual circumstances – that by forcing a former sex worker to repay social security money, the French authorities allegedly forced the applicant back into prostitution.

The Court did not have to discuss the issue of whether prostitution itself constituted inhuman or degrading treatment under Article 3, but commented that no case law existed which set out such a proposition. Its own view indicated that it believed that no prostitution could ever truly be voluntary, and was in one way or another ‘forced’, be it by socio-economic compulsion or other means. This is a ground-breaking and controversial analysis and statement by the ECtHR, given the nuances identified in the sociology of prostitution.

Having now reached the stage of understanding how Article 3 operates and is enforced, we now seek the terminology of human dignity within the relevant jurisprudence of Article 3. This leads us to an exploration of degrading treatment.

²¹⁸ I.e. in E Webster, ‘Exploring the Prohibition of Degrading treatment Within Article 3 of the European Convention on Human Rights’ (PhD Thesis, University of Edinburgh 2009)

²¹⁹ *Wackenheim v France*, Conseil D’etat [Ce Ass.] Oct 27 1995, Rec Lebon 372 (Fr)

²²⁰ *German Peep Show Case* (1), 64 BVerfGE 274 (1981) (F.R.G.)

²²¹ (37194/02) (Unreported, September 11th 2007) (ECtHR)

Degrading Treatment

If Article 3 is considered as three constituent elements, as discussed, torture is at the top end of the scale of severity, harm and thresholds required to be met to prove the respective treatment (or punishment). This is followed by inhuman treatment, and finally by degrading treatment. It is to be noted that there is exists conflation of the different levels of inhuman treatment and degrading treatment. Here, these will collectively be referred to as 'IDT', unless there is specific distinction to be made between the two.

Unlike inhuman treatment, which has received no specifically separate judicial definition, save as to link it to torture,²²² the definition of what treatment could be 'degrading' has been explored in recent ECtHR case-law, notably in the cases of *Price*²²³ and *Pretty*.

In *Price*, a prison/detention case, the Court reiterated the concept of degrading treatment being that whose object was to humiliate or debase the individual concerned'.²²⁴ The applicant in *Price* was a severely disabled female committed to prison, and subjected to allegedly 'extremely humiliating treatment' by prison officers, who also happened to be male (although the court found no fault with that procedure). Interestingly, the Court moved away slightly from the then standard definition of degrading treatment, holding that even though no *deliberate* humiliating treatment could be proven, the nature of the applicant's disability and the conditions in which she was held, though not 'deliberate' in the normal sense of the term, were such that a breach of Article 3 could be shown.

IDT and the application of Article 3 to circumstances involving disabled persons would be examined in great depth shortly after *Price* in the landmark UK case of *Pretty*.²²⁵ In this case, the applicant was a sufferer of motor neurone disease which caused progressive muscle weakness and had a terminal, degenerative effect upon the sufferer, severely disabling her and causing significant suffering to her and her family. The applicant made a decision to commit suicide, but required her family's help in so doing. She sought an undertaking from the Director of Public Prosecutions ('DPP') that her husband would not be prosecuted if he were to assist her to commit suicide. Whilst the commission or attempt of suicide is not illegal in the UK, assisting suicide is illegal.

²²² As in *Ireland v United Kingdom* op cit

²²³ *Price v United Kingdom* (application no. 33394/96) (2002) 34 EHRR 53

²²⁴ *Ibid* [24]

²²⁵ *Pretty v United Kingdom* op cit

As such, the DPP refused to make such a representation or undertaking and the applicant asserted that by failing to do so, the DPP was not allowing her to kill herself, and that the law on assisted suicide itself breached, inter alia, Article 3, because it ensured that her suffering continued. The threshold of torture being far beyond the claim, the Court considered the threshold applicable to degrading treatment in Article 3. It determined that, whereas 'the suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it *is*, or *risks being* exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible', may breach Article 3, there was no breach on the facts.²²⁶

It was 'beyond dispute that the respondent Government [had] not itself, inflicted any ill-treatment on the applicant'.²²⁷ Thus the absence of *de facto* treatment or punishment was fatal to the applicant's claim. *Pretty* was part of a succession of similar 'right-to-die' cases that the ECtHR heard, specifically dealing with assisted suicide for sufferers of debilitating illness. For further case law to this end, see the cases of *Purdy*²²⁸ and, more recently *Nicklinson*²²⁹. In the latter case, the court spoke of dignity taken together with autonomy in the case of arguments for and against assisted suicide. In the judges' opinions, the right to die encompassed a moral dilemma where autonomy and the inherent dignity of human beings was called into question. Both cases were applications brought not under Article 3, but principally Articles 8 and 2, respectively.

Human Dignity in Article 3 – A Clear Judicial Definition of Dignity and its Violation?

In *Keenan*²³⁰ the prison authorities were faced with making a decision as to whether to force-feed the prisoner. The question of dignity arose with the court. Would it be a greater *indignity* to force-feed the prisoner, than to allow him to starve? Although there is frequent mention of dignity and autonomy as joint concepts, and the Court expressed that human dignity would indeed be diminished by certain poor treatment of prisoners, there appears in *Keenan* to be no clear explanation of what human dignity is, save for what would violate it.

What will breach the threshold of degrading treatment will be different in each case. The Article retains a fluidity so that it can be applicable to a variety of circumstances and the

²²⁶ [52]-[53], [55]; Emphasis mine

²²⁷ Ibid [53]

²²⁸ R (Purdy) v DPP (n 136)

²²⁹ R (on the application of Nicklinson) v Ministry of Justice op cit

²³⁰ *Keenan v United Kingdom* (application no. 27229/95) (2001) 33 EHRR 38

inherent subjectivity of the experiences of claimants.²³¹ Indeed, it is a difficult provision through which to set clear objective limits, and perhaps this would be unwise – what might be degrading to me may not be to you.²³² But within the threshold of degrading treatment, we find the concept of human dignity, and specific reference to the diminution thereof as being a means by which degrading treatment may be proven.

Pretty remains one of the most significant recent cases dealing with degrading treatment, serious illness and the state's Convention obligations. Of degrading treatment, the Court said that:

'...where treatment humiliates or debases an individual showing a lack of respect for, or **diminishing his or her human dignity** or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and...fall within the prohibition of Article 3'.²³³

The Court breaks down degrading treatment into essentially three parts: that which humiliates, debases or shows lack of respect for the victim; that which diminishes human dignity; and that which arouses fear, anguish or inferiority capable of breaking moral or physical resistance. As will be noticeable from the ensuing violating dignity chapter, there is significant crossover between these concepts of mistreatment and harm caused to the victim. For example, that which humiliates and debases will naturally also arouse feelings of inferiority, for that is precisely what humiliation, in essence entails.²³⁴

If we seek from this judgment a pure definition of what human dignity is we may have some difficulty. Is it suggested from the wording that the other two parts of degrading treatment are akin to diminution of dignity? Why then is diminution of human dignity separated by an 'or'? This presents some confusion if we are seeking a clear judicial concept of human dignity and its violation from Article 3 jurisprudence. This theme is apparent throughout the relevant Article 3 case-law.²³⁵

²³¹ A point made in Nigel Rodley, *The Treatment of Prisoners under International Law* (Oxford, Clarendon 1987) 94-95

²³² See Yutaka Aria-Yokoi, 'Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR' [2003] Netherlands HRQ 385, 390

²³³ *Pretty v United Kingdom* op cit [52] Emphasis Mine

²³⁴ I.e. Evelin Lindner, 'Humiliation and Human Rights: Mapping a Minefield' (2001) Human Rights Review 46; Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) Journal of Primary Prevention 93

²³⁵ I.e. *Ribitsch v Austria* (A/336); *Tomasi v France* (application no. 12850/87)

This should not cause us too great a concern for the purposes of this thesis. What an analysis of Article 3 and its case law, as in Chapter 9 does, is illuminate a third theme of human dignity, which is the personal inviolability of each individual. This will be fully explored in Chapter 7, where IPA is constructed to include this element of dignity.

Summary and Next Chapter

Whilst the Article 3 jurisprudence fails to provide a detailed definition of what dignity is *per se*, it does in essence authorise dignity as a pivotal consideration when people are subjected to treatment which can be classed as degrading – the lowest threshold of the three elements within the Article. By examining Article 3, we can identify a judicially recognised normative understanding of the need to respect and protect human dignity.

The protection of individual human dignity is thus given an international legal status. This theme has been confirmed by scholars in the United States, who, in recognition of arbitrary references to the principle of dignity have sought to construct legal models thereof for use in constitutional law, based on judgments of the US Supreme Court. The next chapter presents an analysis of legal considerations and models of dignity from these scholars, with reference to associated ideas where relevant. These normative conceptualisations of human dignity narrow the concept down into various elements, so that dignity can be useful in a pragmatic sense in legal adjudication.

6. LEGAL MODELS OF HUMAN DIGNITY

This chapter continues from the previous chapters on human dignity to identify descriptive legal models of dignity in the literature, and compare and contrast various elements. It will consider respective elements of dignity in those models, in light of the theory and law already analysed and justify the adoption of the three elements which will make up IPA dignity in the following chapter. So far, the study has considered two central themes of dignity, focusing upon some philosophical and theological ideas, followed by an examination of human dignity in international law and human rights theory. As stated in Chapter 3, one of the problems with attempting to construct a legal model of dignity is that it does not simply have one meaning, and instead the term may be applied in a variety of ways, and divided into various sub-concepts. Before this chapter considers the approaches of legal theorists to model dignity, the next section outlines important non-legal models of dignity which merit mention here.

Legal Models of Dignity

Some jurisdictions have used human dignity in an adjudicative sense over the years, including South Africa.²³⁶ Anton Fagan explains that, whilst not ascribing to a particular concept of human dignity, the South African Constitutional Court ‘has endorsed [certain] Kantian...propositions about human dignity’.²³⁷

The ensuing conceptions are interpretations of dignity²³⁸ mainly developed in US constitutional legal theory.²³⁹ These models were adopted in this study, because they are

²³⁶ Sandra Liebenberg has critiqued of the use of the concept of human dignity in respect of adjudication in South African jurisprudence; Liebenberg op cit

²³⁷ Anton Fagan, ‘Human dignity in South African law’ in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 404: ‘(1) Human dignity is the value inherent in every human being (the value every human being has simply by virtue of being human). (2) This value is infinite and consequently incomparable with other values. (3) This value, since it is both inherent and infinite, is equal for all human beings, regardless of their character or conduct. (4) Human beings, as objects of value, deserve respect. (5) Human beings, as objects of equal value, deserve equal respect. (6) Human dignity, so understood, is the foundation of most (possibly all) of the rights in the Bill of Rights.’

²³⁸ By this it is meant that a standard of dignity is constructed out of various elements.

²³⁹ Carter Snead cites other iterations of dignity in US law, inter alia in criminal law and procedure, and in civil rights and anti-discrimination law; Carter Snead, ‘Human dignity in US law’, in Marcus Düwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 386ff

constructed in response to a concern that dignity was being invoked in Supreme Court cases without sufficient consideration of the many iterations of the concept, and of the alleged inconsistency of its judicial invocation.²⁴⁰ As such, a number of scholars have in recent years sought to construct descriptive models of dignity that would enable there to be a less ad-hoc application of the concept in US constitutional law.²⁴¹ The models of dignity proposed by US scholars are outlined here, and the elements of dignity they use are identified. It will become clear that these models consist of the central themes of dignity discussed so far, and to some extent they expand on those themes.

In the examination which follows, I draw upon the work of a number of scholars, including Leslie Henry and Neomi Rao to understand how dignity has been conceptualised as a model for adjudicative use in US constitutional law.²⁴² Before the US versions are considered, the work of Christopher McCrudden is addressed, as we begin with the analysis of a 'Minimum Core' model of dignity.

A Minimum Core of Dignity

Christopher McCrudden and Paulo Carozza, in different papers, identify a 'minimum core of human dignity'²⁴³, which is, as McCrudden explains *agreed* by the basic human rights texts. This minimum core contains three elements; firstly 'that every human being possesses an intrinsic worth, merely by being human'.²⁴⁴ This is called the 'ontological' claim. Secondly, that 'this intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth'.²⁴⁵ This second element is known as the 'relational' claim. Finally, as a supplement to the

²⁴⁰ Neomi Rao writes specifically that the use of dignity in its European (as she claims), communitarian perspective, would weaken American constitutional principles for individual rights; Neomi Rao, 'On the Use and Abuse of Dignity in Constitutional Law' (2007) 14 Columbia Journal of European Law 201

²⁴¹ I.e. Neomi Rao, 'Three Concepts of Dignity in Constitutional Law' (2011) 86(1) Notre Dame Law Review 183 and Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169

²⁴² It will be seen that autonomy could be a principal identifying factor of human dignity in these estimations. Rao specifically contrasts dignity with autonomy however, because a person who is unable to exercise autonomy through incapacity in body and/or mind does not therefore lack dignity. This is a point that will be explored in further detail during the formulation of IPA dignity, in the following chapter.

²⁴³ Respectively in Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) European Journal of International Law 655; Paolo Carozza, 'Human dignity and judicial interpretation of human rights: a reply' (2008) 19(5) European Journal of International Law 931

²⁴⁴ Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) European Journal of International Law 655, 679

²⁴⁵ Ibid

second requirement; 'a third element regarding the relationship between the state and the individual'.²⁴⁶ This final element is known as the 'limited-state' claim. As an influential legal approach to modelling human dignity, it will be helpful to digest each of these elements in turn, with appropriate cross-reference to other scholars' views and conceptualisation of dignity. McCrudden identifies differences in the approach to each of the three elements by courts in a variety of jurisdictions including the U.S.A, Germany and Canada.

The approach taken by McCrudden has been termed 'essentialist' in its nature, since it aims to 'distil human dignity' to a core meaning. In her contrasting assessment of dignity, Leslie Henry explains why an essentialist approach is not helpful in identifying violations of dignity in every case. It is her position that by diminishing dignity to a concrete core, it is difficult to be guided as to how dignity is affected in individual cases. A minimum core, therefore, requires a further breakdown to be applied to specific cases.²⁴⁷

An ontological claim, and inherent dignity

To begin with, there is the familiar inherent, intrinsic view of dignity, or 'ontological claim'.²⁴⁸ The claim relates to the theistic or agnostic, Stoic, and particularly the Kantian theory of dignity, with the focus being that our inherent dignity is equal in all peoples. Consider this quote of Kant;

"[E]verything has either a price or a dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity"²⁴⁹

The focus is upon the individual having such worth that they have no identifiable pecuniary value – they are priceless, which has been termed a 'morality of ends'.²⁵⁰ Persons are not to

²⁴⁶ Ibid

²⁴⁷ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169, 182. She explains that essentialist and (the opposing) reductionist views (discussed further on in this chapter) are not sufficient to deal with the complicated nature of the concept; 'Standard approaches to conceptualizing dignity may be the very reason that dignity skeptics [sic] and antidignitarians [sic] have long opposed the word'; 186

²⁴⁸ This ontological claim is termed by Neomi Rao (see further on) as 'inherent dignity', and by Leslie Henry as 'Equality as Dignity' to represent the same intrinsic value of dignity.

²⁴⁹ Immanuel Kant (Gregor M (tr)) *Groundwork of the Metaphysics of Morals* (1998), 42 [4:434] referred to in Jürgen Habermas, 'The Concept Of Human Dignity And The Realistic Utopia Of Human Rights' (2010) 41(4) *Metaphilosophy* 464-464 (n 4)

²⁵⁰ Avishai Margalit, *The Decent Society* (Harvard 1996) 34

be regarded as things, but in their immutable inability to be traded as objects, they retain their intrinsic dignity. The inherent worth of the individual is universal, and exists regardless of a person's race, sexual orientation, religion etc. One key demonstration of that point is that it is commonplace across the globe for funeral rites to be observed, even at times of war.

A relational claim, and collective dignity

As suggested in the name, this is to do with the respect for the dignity of the person, accorded to them by others in society. This is a notion held by Ritschl, as mentioned, as 'human dignity by impartation'.²⁵¹ Once again, the Kantian categorical imperative also appears relevant here – there exists a duty to treat others in such a manner that their dignity is respected. The relational claim is not about the way in which people are governed, but the way in which they *should* view each other. As such there is a moral implication involved in such a claim – what we ought to do or not to do to each other in furtherance of respecting one another's dignity. Is this not, though, an exclusively communitarian form of dignity?

As will be seen further on in this chapter, this claim is comparable to what is termed 'collective virtue as dignity' in Henry's model, which she provides is primarily founded upon communitarianism; 'Collective virtue as dignity addresses how members of civilised societies ought to behave and ought to be treated in order to respect the collective dignity of humanity'.²⁵² It is Henry's position that '[W]hen society treats people in ways that are *in*-humane, or when people engage in activities that are *de*-humanizing, collective virtue as dignity diminishes'.²⁵³ But in spite of the requirements of the community to take responsibility for this collective dignity, it remains individual – it is ultimately a one-to-one interaction which determines if this idea of dignity is preserved.

To consider the idea further, we might again consider an intriguing case that demonstrates collective virtue as dignity, known colloquially as the French dwarf-throwing case.²⁵⁴ The activity of dwarf-throwing, where dwarf men and women would be thrown by members of the

²⁵¹ Ritschl in Kretzmer and Klein op cit 88

²⁵² Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169, 220-221

²⁵³ It is easy to draw associations in the language used with Article 3 of the ECHR, and upon inhuman and degrading treatment, which violates the victim's dignity. Can individuals accord other persons dignity, if they do not understand the concept themselves, or have no consideration for others? Chapter 9 explores the violation of dignity in Article 3 jurisprudence.

²⁵⁴ Wackenheim v France as quoted in Rao op cit at [n 164]

public for entertainment, was banned by the police. The grounds for the action by the police was to preserve public order, and for the protection of dignity. One of the dwarves in an act that was shut down, Mr. Wackenheim, contested that by banning his right to take part in such contests, he was being denied the right to earn a living in that way. He argued that his autonomy was being curbed by the decision. The case progressed to the High Administrative Court -the French Conseil d'Etat, which concluded that it deemed the behaviour degrading to all members of society because it violated an overriding sense of human dignity.

So whose dignity was injured in the process of the dwarf throwing? On the facts, no complaints were reported from those taking part, nor their spectators. So why did the state step in? The decision rightfully raises some concern for those who seek to model human dignity. It is apparent from this decision that the protection of dignity can invoke state paternalism. Such paternalism in protecting dignity is discussed at length by Rao under the heading 'Substantive Conceptions of Dignity' and in particular, where substantive dignity is at odds with inherent dignity, as was clearly the case with Mr. Wackenheim. Can dignity be determined by and regulated by the state? This is suggested by McCrudden in the third element of the minimum core.

The limited-state claim and state-defined dignity

This final element of the minimum core of dignity relates to the state and its policies vis-à-vis upholding the principles of human dignity. Rao calls this modified version of communitarian dignity 'dignity as coercion'. It is the principle that the state will prohibit behaviours:

'that offend social norms of dignity on the grounds that the community may at times look after the individual's dignity better than the individual himself. Although private individuals often have judgments about what constitutes a good or dignified life, when such conceptions of dignity become *legal requirements* they can result in coercion. In this view, dignity is not inherent and universal; rather, a person can lack dignity when he fails to exhibit certain behaviours or qualities.'²⁵⁵

I will term this interpretation of dignity as 'man-made dignity'. It is not inherent, and as such, it clashes with our first core theme of dignity. It can also be lost when a person fails to exhibit

²⁵⁵ Rao op cit 222

the behaviour which is socially *dignified*. As Rao states, this is a ‘...socially constructed and politically enforced’ version of dignity.²⁵⁶ It is not difficult to see the dangers of this concept of dignity. As Steven Pinker acknowledges, the imposition of a leader’s ideal of dignity may lead in the extreme to a totalitarian regime, disregarding individual dignity altogether. Given what we understand from the broader conceptions of human dignity, it is somewhat alarming that the state could define dignity as it chooses, or enforce it in whichever ways it see fit. Certainly, a man-made dignity always has the potential to be politically motivated, and corrupted.²⁵⁷

Leslie Henry’s observation of Five Concepts of Dignity

We now turn to examine another typology of dignity – according to Leslie Henry. In her 2011 article,²⁵⁸ Henry sets out five interrelated concepts of dignity that are identified from an empirical study of Supreme Court opinions that use the concept of dignity. Like other scholars, she identifies the problem, in the United States’ constitutional courts at least, with over-generalising and not clearly defining dignity in its judgments. Of the term ‘dignity’, ‘...its importance, meaning and function are commonly presupposed but rarely articulated’.²⁵⁹

Indeed, as we have established, a term such as dignity has an extraordinary depth of meaning, which can vary from situation to situation. It can be a very ‘light’ term to express somebody’s dignity lost perhaps if a practical joke is played upon them, or it might be the dignity of a torture victim. Henry, consistent with the findings of this study in Chapter 4, quoting Gewirth²⁶⁰ says that dignity is ‘an essential “basis of human rights”’.²⁶¹ Henry also points out that Ronald Dworkin was also a strong supporter of the concept of dignity as a

²⁵⁶ Ibid

²⁵⁷ Hence the value of the ideal of dignity as inherent – is not imposed by man. It simply exists, either through a theistic lens as endowed by God, or otherwise, inter alia, as visible through separation from the rest of the animal kingdom. See Chapter 3.

²⁵⁸ Leslie Meltzer Henry, ‘The Jurisprudence of Dignity’, (2011) 160(169) University of Pennsylvania Law Review 169

²⁵⁹ Ibid 172

²⁶⁰ Leslie Meltzer Henry, ‘The Jurisprudence of Dignity’, (2011) 160(169) University of Pennsylvania Law Review 169 [n 14]

²⁶¹ Ibid 172

basis for rights, and stated ‘...“the principles of human dignity...are embodied in the Constitution and are now common ground in America”’.²⁶²

As is the method of this study in constructing IPA dignity in Chapter 7, Henry’s concepts are based on the so-called ‘Wittgensteinian approach’ to conceptualizing terminology; contending that dignity has a number of meanings that ‘in Wittgenstein’s words, share “family resemblances” to each other.’²⁶³ What follows from her study are five concepts which are linked but are not mutually exclusive. She helpfully draws attention to eight different uses of the term dignity,²⁶⁴ and identifies ‘reductionist’ and essentialist approaches to studying dignity, (determining McCrudden’s work as the latter).²⁶⁵ In conclusion in her methodology, she explains that ‘dignity, therefore, cannot be defined in a permanent way, but must instead remain open to revision’.²⁶⁶

Institutional Status as Dignity, and the concept of Dignity as Honour

This conception is based on ancient underpinnings, as relates back to the Roman ‘honour’ system of *dignitas* as discussed above. Such a conception in modern terms has to do with political status and position in society. This model has less to do with the individual concept of inherent dignity, and more to do with what is earned.²⁶⁷

Equality as Dignity; Dignity as Inherent

Once again, this is the intrinsic quality of dignity which is universal – applicable to all persons. Here, the emphasis goes beyond the inherent nature of dignity to champion the equality that this status demands. All humans possess equal worth and therefore warrant treatment as an equal, (as opposed to equal treatment).²⁶⁸

²⁶² Ibid, quoting Dworkin at [n 16]. This is backed up in Henry’s article by her methodological approach of examining the judgments of the Supreme Court, revealing the regularity of the uses of the term.

²⁶³ Ibid 172, quoting Ludwig Wittgenstein, *Philosophical Investigations* (1968)

²⁶⁴ Ibid 183

²⁶⁵ Ibid 185-186

²⁶⁶ Ibid 189

²⁶⁷ As such, it will not be incorporated into the model of dignity, IPA. This is discussed further in Chapter 7.

²⁶⁸ As Sandra Liebenberg suggests, in the words of Dworkin in Ronald Dworkin *Taking Rights Seriously* (Duckworth 1977) 227; ‘the acknowledgement of equal moral worth requires treatment as an equal as opposed to

It is this conception which matches best to the ontological claim of the ‘minimum core’ model examined earlier. Henry identifies the potential for running into difficulty if inherent dignity is only recognised in human beings due to their: ‘displaying certain characteristics, such as ‘humans’ unique ability to reason, experience pain, form culture, teach collaboratively, have meaningful life projects, and engage in self-reflection...The challenge posed by pinning dignity to any of these qualities, however, is that some humans may not be able to express the dignity-denoting trait.’²⁶⁹ People who are mentally and physically disabled for example, and unable to demonstrate ability to reason, or ‘capacity to express most of these characteristics’²⁷⁰ clearly still possess inherent human dignity and worth, as much as those who can clearly demonstrate these functions.²⁷¹

Liberty as Dignity

Unlike equality as dignity, this element can be obtained and lost throughout one’s lifetime – it is in this description of dignity that one who is unable to express certain traits would not qualify as having liberty as dignity.²⁷² This is because liberty as dignity is to do with autonomy of the person. Not all persons have liberty all of the time; ‘... [B]ecause it is capacity driven, dignity of this kind is contingent – one can gain or lose it over a lifetime. For example, young children and mentally incapacitated individuals do not qualify for liberty as dignity, but it is not foreclosed to them if and when they gain mental competence’.²⁷³

equal treatment...[T]reatment as an equal requires full acknowledgement of the racial, gender, social, economic, cultural and other differences between groups in society. Thus the quest for equal worth or dignity is not a quest for uniformity, but a quest to eliminate the disadvantages and inferior status that attach to membership of particular groups’; Liebenberg op cit 14

²⁶⁹ Leslie Meltzer Henry, ‘The Jurisprudence of Dignity’, (2011) 160(169) University of Pennsylvania Law Review 169, 201

²⁷⁰ Ibid

²⁷¹ C.f. Willard Gaylin, ‘In Defense of the Dignity of Being Human’ (1984) 14(4) The Hastings Center Report 18, 20 discussed previously

²⁷² Leslie Meltzer Henry, ‘The Jurisprudence of Dignity’, (2011) 160(169) University of Pennsylvania Law Review 169, 208

²⁷³ Ibid

Personal Integrity as Dignity and the inviolable nature of the person

Henry explains that this form of dignity is offended when a person faces 'dis-integration' as a person – for example when the person is defined by one trait only that reduces that person to that single trait and 'disqualif[ies] the people who possess or express it from a trajectory of human excellence or virtue'.²⁷⁴ Defamation is relevant here and so when a person is defamed, and thus reduced to the trait of, e.g. 'adulterer', or 'tax-evader', the focus upon that person is placed entirely on the (true or otherwise) statement of their person, and dis-integration follows the reduction of the person to that single trait.²⁷⁵ The other way in which dis-integration may occur is when the individual is 'only able to present himself as a part of his full self, rather than a unified, composed, or collected whole'.²⁷⁶

This idea of dignity is one of boundaries. Personal boundaries are explicitly and implicitly expressed by individuals, to maintain physical and mental integrity. The transgression of such boundaries amounts to a violation of this element of human dignity. This idea of dignity appears highly relevant to the preservation of the inherent dignity of individuals, and as such, a violation of this form of dignity, say through sexual assault, would also violate inherent dignity. We also see from the analysis of Article 3 in the preceding chapter and in Chapter 9, the importance of this iteration of dignity. It will form part of IPA dignity, in the next chapter, where it will be examined more completely.

Collective Virtue as Dignity

As examined in the above section on the relational claim of the minimum core, this final conception of dignity from Henry involves the human being in the community within which he or she lives. Henry considers this a communitarian form of dignity, extending beyond the individual and seeing him or her as a piece of a larger puzzle. Henry describes this conception as 'refer[ring] to the excellence of the human species. This excellence recognizes humans as the best example (*arête*) of the animal kingdom. Accordingly, collective virtue as dignity is expressed when people behave and are treated in ways worthy

²⁷⁴ Ibid 217

²⁷⁵ Dis-integration is discussed at length in Chapter 8 as it relates to humiliation and the element of IPA dignity Personal Inviolability as Dignity.

²⁷⁶ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169, 219

of humans, not beasts.²⁷⁷ She continues, 'When society treats people in ways that are *in*-humane, or when people engage in activities that are *de*-humanizing, collective virtue as dignity diminishes.'²⁷⁸

She links torture with a diminishing of this conception of dignity,²⁷⁹ which again ties in with this thesis, and the ties between prostitution, human dignity and Article 3, inhuman and degrading treatment. But this form of dignity goes further to encompass the community's viewpoints on the actions of individuals. If the individual conducts themselves in a way which conflicts with the community's view of what is proper, or 'when individuals engage in undignified conduct, their acts may threaten humanity's collective virtue as dignity'.²⁸⁰ An example of such is the dwarf-throwing case as mentioned above. So collective virtue as dignity for Henry has a communitarian status.

Neomi Rao; Legal usage of 'Dignity'

Neomi Rao, in her 2011 work²⁸¹ addressing the legal usage of dignity, identifies three conceptions thereof. Firstly, and demonstrating something of a common ground among scholars, she considers the inherent claim of dignity in human beings, claiming this to be the concept of dignity in its 'most universal and open sense'.²⁸² Secondly 'substantive forms of dignity' – which 'require living in a certain way'²⁸³, speaking also of human flourishing. Thirdly, a community-oriented 'dignity as recognition'; which relates, *inter alia* to modern human rights recognition. Rao acknowledges the confusion surrounding the term dignity in its legal usage, by comparing it to the terms 'liberty' and 'equality'. This is reductionism, as highlighted by Henry.²⁸⁴ Dignity is reduced to another term, such as liberty or autonomy, and

²⁷⁷ Quoting Leon Kass, 'Human Dignity' in Leon Kass (ed) *Being Human: Core Readings in the Humanities: Readings from the President's Council on Bioethics*. (Recording for the Blind & Dyslexic, 2005) 568

²⁷⁸ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169, 221

²⁷⁹ *Ibid*

²⁸⁰ *Ibid* 222

²⁸¹ Rao *op cit*

²⁸² *Ibid* 187

²⁸³ *Ibid*

²⁸⁴ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169, 182

thus loses its own character and status. Is Rao correct that this is the only way we can understand dignity in a legal sense? Lawyers and judges certainly have familiarity with different meanings of liberty and equality, values that are a part of our constitutional tradition, even if they themselves remain contested ideals. Rao indicates however that dignity presents a relatively new legal term, since it has 'no firm footing and no established range of legal meanings'.²⁸⁵

In much the same way as this thesis attempts to do in respect, in this instance with prostitution as a socio-legal 'problem', Rao hopes to utilise the three concepts to determine a range of legal meanings that potentially resolve the problem of the term's legal status and utility. Her conceptions are now considered and cross-referenced to the others here discussed.

Inherent Dignity, presenting as a negative freedom

Rao's interpretation of inherent dignity is much the same as McCrudden's conception, tracing a historical path from creation, through Kantian philosophy to international human rights law.

This conception is at odds with state interference:

'Dignity in this context supports individual autonomy and freedom from state interference. The basic idea is that a person's dignity is best respected or enabled when he can pursue his own ends in his own way'.²⁸⁶

This is so-called negative liberty – freedom from interference to pursue one's own ends, aka the protection of autonomy. Rao explains that inherent dignity consists of two requirements, drawn from the Kantian understanding of dignity:

'...[firstly] a presumption of human equality that each person has the same *quantum* of dignity by virtue of his humanity...second, inherent dignity is not measured by an external goal of what counts as being dignified or worthy of respect...'.²⁸⁷

²⁸⁵ Rao op cit 190

²⁸⁶ Ibid 203

²⁸⁷ Rao agrees that what I term 'man-made' dignity does not accord with inherent dignity; Ibid 201

The right to sexual privacy and free speech are considered and Rao comments on the 'intrinsic quality of human beings as capable of formulating their own ends and therefore requiring space of freedom for self-definition'.²⁸⁸ Rao provides evidence from a number of constitutional cases of the courts' grappling with the concept of dignity in judging a raft of difficult cases.

Substantive Conceptions of Dignity

'By contrast to inherent or intrinsic dignity, positive conceptions of dignity promote substantive judgments about the good life. Dignity here stands for what is valuable for individuals and society at large.'²⁸⁹ Rao here speaks of the concept of dignity which is more like the limited-state claim of the minimum core – paternalistic to the extent that state-mandated conditions of human flourishing can be met and dignity satisfied. As she mentions this is in sharp contrast to the inherent dignity of the individual as described in her first conception. This is a 'man-made' dignity in many respects – that determined to be best for the individual, even if the individual concerned does not agree. As mentioned above, whereas with inherent dignity, it is not determined by externally set goals, aspirations etc., with substantive conceptions of dignity, this is precisely the case.

This model of dignity mirrors the limited-state claim of the minimum core, and the collective virtue as dignity model in Henry's typology. Problematic is that the state decides upon what is 'dignified' behaviour, and paternalism is a real threat to inherent dignity and autonomy. Rao cites the dwarf-throwing case also as a demonstration of the tension of these two conceptions of dignity. It is pertinent to use a quote of Isaiah Berlin from Rao's work:

It is one thing to say that I may be coerced for my own good which I am too blind to see: this may, on occasion, be for my benefit; indeed it may enlarge the scope of my liberty. It is another to say that if it is my good, then I am not being coerced, for I have willed it, whether I know this or not, and am free (or 'truly' free) even while my poor earthly body and foolish mind bitterly reject it, and struggle against those who seek however benevolently to impose it, with the greatest desperation.²⁹⁰

²⁸⁸ Ibid 212

²⁸⁹ Ibid 221

²⁹⁰ Isaiah Berlin, 'Two Concepts of Liberty', in Isaiah Berlin, *Four essays on liberty* Vol. 969 (New York: OUP 1970) 134, cited by Rao op cit 226 at [n 164]

Dignity as Recognition

Rao's final conception is akin to rights protection, the recognition, and thus preservation of individual particularity that:

...stands for modern demands that go beyond first-generation civil liberties and even second-generation social-welfare rights to require a certain attitude by the state and by other people. This is comparable to the relational claim of the minimum core of human dignity. The state's place in this conception of dignity is to ensure that 'state policies demonstrate the proper regard for individual differences.'²⁹¹

Drawing Conclusions from the Models

There are some observations and comparisons that can be made between concepts. 'Equality as dignity' and the 'ontological claim', are comparable as a reflection of the core theme of inherent dignity. The 'relational claim' and 'limited-state claims' of the minimum core appear to coincide with collective virtue as dignity, in that the community's overarching needs and considerations are key, above the individual's. Therefore the individual's autonomy might be partially or completely overruled in what is *best for them* to uphold their dignity, as determined by the community and state.²⁹² We have discussed the dangers of this form of dignity.²⁹³ Also a collective dignity, which is based on the premise of what others accord could not sit beside inherent dignity in a descriptive model – it would entirely contradict inherent dignity.

Nonetheless, Henry's five concepts of dignity provide a multi-faceted approach to the understanding of the concept. Also this approach is neither 'reductionist', nor 'essentialist'.²⁹⁴ She goes beyond the historical considerations of human dignity as mentioned above, which tended to centralise around inherent dignity alone, to explore autonomy, incapacity, and community views on dignity. Henry's approach is thus preferred.

²⁹¹ Rao *ibid* 243

²⁹² E.g. the case involving Mr. Wackenheim, as discussed; *Wackenheim v France* *op cit*

²⁹³ See also Steven Pinker, 'The Stupidity of Dignity' (2008) May 12 2008 The Richard Dawkins Foundation for Reason and Science <http://richarddawkins.net/article,2567,The-Stupidity-of-Dignity>, Steven-Pinker, 1

²⁹⁴ She describes the minimum core of dignity as being essentialist, not context-specific and hence unable to cope with a myriad of circumstances in which dignity is called upon; Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169, 178ff

Before constructing IPA in the next chapter, it is important to state that the models here reviewed do not represent the entirety of dignity modelling in the literature, although they are representative of the legal efforts to do so in recent years. Reviewing these legal models has, as mentioned, confirmed the core themes of dignity in the literature. Are there any other, non-legal models of dignity which assist in our construction of IPA?

A review of the literature in human dignity reveals the work of prominent theorists in the field of nursing and healthcare, with a particular leaning towards dignity as it relates to the care of the elderly. It is recognised that attempts to model dignity in this field have been practised by many theorists, and numerous models not referred to here are applied to dignity in healthcare and for those in elderly care.²⁹⁵

A key researcher in this niche area of dignity theorisation is Lennart Nordenfelt, who asserts that dignity comprises four different 'kinds', which share semblance with some of the elements discussed above.²⁹⁶ A 'dignity of merit' is tied with the institutional status as dignity, or the traditional *dignitas* rank-imposed form of dignity.²⁹⁷ 'Dignity as 'moral stature', as the second type, is akin to self-respect, and represents a highly subjective type of dignity. The 'dignity of identity' appeals to personal integrity and elements of dignity that protect us from humiliation.²⁹⁸ Finally, what is termed *Menschenwürde* is essentially drawn from the concept of inherent dignity – identifiable across all persons of the human race.²⁹⁹ Immediately in Nordenfelt's presentation of dignity, we see comparisons to the legal models discussed. The

²⁹⁵ Including one particular leading project which was conducted to understand dignity in older generations; Dignity and Older Europeans (Fifth Framework (Quality of Life) Programme) European Commission Research. More recently, dignity was conceptualised to produce a three-pronged model of dignity. It reveals dignity as representative of the body, mind and spirit of the individual, in a holistic approach. Margareta Edlund, Lillemor Lindwall, Iréne von Post, Unni Lindström, 'Concept determination of human dignity' (2013) 20(8) Nursing Ethics 851. Such a formulation takes account of considerations of the *Nooma* of the person, previously discussed in Chapter 3, which separates the human being from the animal kingdom. See also Peter Singer on the dignity of animals; i.e. Singer (n 114)

²⁹⁶ Lennart Nordenfelt, 'The Varieties of Dignity' (2004) 12(2) Health Care Analysis 69

²⁹⁷ Nordenfelt explores different senses of this type of dignity, which also consists of 'informal dignities of merit', some of which can be fleeting; *Ibid* 72

²⁹⁸ Hence there is again consideration of a personal inviolability that our inherent dignity accords to us. See also Glensy *op cit*, in which he discusses a 'proxy approach' to recognising dignity as a legal right, with the example of bodily integrity.

²⁹⁹ Nordenfelt makes mention of the idea that dignity as it exists as *Menschenwürde* cannot be lost; Lennart Nordenfelt, 'The Varieties of Dignity' (2004) 12(2) Health Care Analysis 69, 79. This is a similar understanding to inherent dignity adopted in IPA.

only apparent difference is the application of the model of dignity proposed, in this case to patients in healthcare, rather than in the courtroom.

In another healthcare model of dignity, Julie Clarke has also defined dignity for its promotion in practice. She echoes the ethos of this thesis, which argues for a pragmatic version of dignity, stating that; ‘...a standardised understanding is essential for the concept to be communicated, researched and used in practice, as well as to generate theory.’³⁰⁰ Clarke’s model stems from an understanding of dignity as both objective and subjective. Objective dignity is that which represents a fundamental right, whilst subjective dignity is divided into ‘self-regarding’ and ‘other regarding’ dignity.³⁰¹ This detailed model of dignity makes provision for the cost of dignity ‘loss’ on the self-esteem of a patient. This has a knock-on effect upon both mental and physical health.³⁰²

Summary and Next Chapter

From the review of the core themes, to the international law, and finally the conceptions of human dignity above, four elements are highlighted which represent human dignity. First of all, human dignity is inherent. The intrinsic/inherent nature of dignity appears to underpin all the literature, and foundations of the international law. Secondly, human dignity is personal, physical, psychological and emotional integrity or inviolability. Dignity is the integrity of the human person, body mind and soul. This form of dignity is particularly apparent from the human rights protections contained in the international human rights law, and notably in Article 3. Thirdly, human dignity is autonomy. The literature is clear that autonomy, as it stands for the freedom of choice over one’s life, demonstrates the possession of dignity. Finally, human dignity as traditionally derived from the social contract theories of Hobbes, Locke and Rousseau, enunciated by Ritschl as dignity by impartation and discussed in these models as accordance to other individuals of respect for their inherent dignity, is collective and relational. This is still individualistic human dignity, but is *bestowed* upon persons by others.

³⁰⁰ Julie Clarke, ‘Defining the concept of dignity and developing a model to promote its use in practice’ (2010) 106(20) Nursing Times 16; www.nursingtimes.net, citing Leila Shotton, David Seedhouse, ‘Practical dignity in caring’ (1998) 5(3) 246 and Jane Haddock, ‘Towards a further clarification of the concept ‘dignity’ (1996) 24(5) Journal of Advanced Nursing 924

³⁰¹ Clarke Ibid 17ff

³⁰² Ibid 19

This chapter has presented recent legal conceptualisations of dignity, as elucidated partly by constitutional law scholars, and also non-legal models of dignity in another discipline; healthcare, in order to demonstrate comparisons between the legal and non-legal models of dignity.

The next chapter constructs the IPA model of dignity from the three core themes identified, and the utility of IPA dignity will also be expounded to justify the modelling of dignity for the purposes of the ensuing socio-legal analysis in Part Five.

7. CONSTRUCTING 'IPA' DIGNITY

The study has considered that the literature presents three central themes in the language of human dignity. When one speaks of human dignity, it is most likely that they are speaking of a combination of these elements, or perhaps one or two, depending on the context of the discussion or analysis. It is on the premise that these themes exist and they reoccur, that the construction of a model of dignity, the IPA model is justified. This chapter will set out the rules by which it operates, and it will be both related with and distinguished from the particular model upon which it is based, that of Leslie Henry as explicated in the preceding chapter.

The utility of IPA will then be demonstrated and illustrated using some examples. As per the conclusion to Chapter 3, and in keeping with the core themes within the literature, inherent dignity is defined as a foundational element of the model, without which the other elements could not exist. The model will first be constructed as a descriptive model of dignity, representing the language of dignity from the literature and the models of dignity already examined previously. Following this descriptive approach and the construction of IPA dignity, the model will be ascribed a normative framework which will further legitimate and enable the model to be utilised to consider the issue of prostitution.

As this chapter theorizes a model of human dignity, it is pertinent to mention the words of Daniel Solove³⁰³ in respect of theories such as the ensuing one, to indicate that this is but one of many possible approaches to modelling dignity:

...[the theory propounded] is but a snapshot of one point in an ongoing evolutionary process. Theories are not lifeless pristine abstractions but organic and dynamic beings. They are meant to live, breathe, and grow...[as well as] be tested, doubted, criticized, amended, supported, and reinterpreted. Theories, in short, are not meant to be the final word, but a new chapter in an ongoing conversation.

Justifications for the Modelling of Dignity

The literature has revealed that dignity is hard to define. It is apparent that it means many things in multiple contexts. And yet its existence and its value have been presented in this study as beyond reasonable denial. It can be inductively determined that academics

³⁰³ This point is made by Leslie Henry in relation to her own work, using this quote from Solove, who has attempted to conceptualise privacy in Daniel Solove, 'Understanding Privacy' (2008) ix

generally agree with the suggestion that dignity is inherent in all persons, equally, even though that form of dignity need not be mutually exclusive with other ‘forms’ of it. Also agreed is that dignity represents autonomous free choice and agency. The suggestion in the literature is that dignity exists as an intangible concept, which finds itself based in a number of disciplines, each with different approaches.

Dignity’s existence is also illuminated by actions which represent an affront to dignity. This is a particular point made by Avishai Margalit and Daniel Statman with reference to humiliation.³⁰⁴ Where a person is humiliated, we can discern that they have been humiliated *because* they have dignity. If the victim of humiliation had no dignity, it would be impossible for them to be humiliated. Humiliation, as will be examined in Chapter 8, represents a particular mode of dignity violation which offends personal inviolability as dignity. As such, it illuminates the presence of inherent dignity.

As we have seen in Chapter 4, dignity underpins many international legal instruments. In the United States, the Supreme Court has made more regular references to the subject of dignity in its adjudication, prompting scholars to seek ways of making it more concrete and objective.³⁰⁵ Modelling human dignity has also been considered in other contexts. An example is in the health and human rights arena, where Jonathan Mann, in 1994 called for a taxonomy and epidemiology of dignity violations, which he believed ‘...may uncover an enormous field of previously suspected, yet thus far unnamed and therefore undocumented damage to physical, mental and social well-being.’³⁰⁶ Mann’s work focused almost exclusively on the perceived linkage between health and human rights, illustrating concerns that health and wellbeing, impacted upon by violations of dignity, would not at that time be fully understood.

The supposed ‘need’ or maybe desire for a model of human dignity has been propounded by US constitutional law scholar Rex Glensy, who said that ‘without a certain specification of how fostering of human dignity is to play out within a legal framework, we are left with an empty vessel of questionable utility’.³⁰⁷ This study considers Glensy to be correct. If dignity is to have a substantive use in applications not only in a socio-legal context but also in legal adjudication, then there should be some structural representation of it. In the UK, the courts

³⁰⁴ See Margalit (1996) op cit and Statman in Kretzmer and Klein op cit

³⁰⁵ As outlined in Chapter 6

³⁰⁶ Jonathan Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg, ‘Health and Human Rights’ (1994) 1(1) Health and Human Rights 6-23, 18

³⁰⁷ Rex Glensy, ‘The Right To Dignity’ (2011) 43(65) Columbia Human Rights Law Review 142

have not yet fully declared what human dignity is, again demonstrating that a model is preferable.³⁰⁸

It serves as the foundational principle in international law towards the rights of individuals and communities. It provides (in principle) protection through international law against atrocities committed by peoples. However, aside from Dreier's statement above, why should dignity only be capable of invocation in the most extreme scenarios? If dignity is inherent in all humans, then it is relevant in all human situations. We can justify the modelling of the concept of dignity, as long as due respect is paid to the need to keep the model malleable to different contexts in which it is to be used. This theme is explored below. Firstly, there will be a presentation of the 'anatomy of IPA dignity' in what follows.

The Anatomy of IPA dignity

Inherent Dignity

The model is headed by the core theme of inherent dignity. Firstly, dignity is inherent to all human beings of all races and all nations; intrinsic in human beings qua human.³⁰⁹ Since this is the case, it follows that this element of dignity is self-evident; it needs no demonstration, and also it cannot be removed from any individual by any violating act. As Jacques Maritain stated, human rights are 'owed to man because of the very fact that he is man'.³¹⁰ So rights are based upon the recognition that all persons have an inalienable dignity. Whilst in some accounts dignity is considered useless because of the lack of clarity over possessing and losing dignity, this element provides a bedrock of dignity – most widely-understood, and least rebuttable element of the model of dignity.³¹¹ Inherent dignity provides authority and grounding for the other two elements which follow.

³⁰⁸ For instance, the closest discussion of dignity in a non-human rights case context was in the House of Lords case *Ghaidan v Godin-Mendoza* in which it was held: 'Democracy is founded on the principle that each individual has equal value. Treating some as automatically having less value than others not only causes pain and distress to that person but also violates his or her dignity as a human being'; [2004] 2 AC 557, [605] Baroness Hale

³⁰⁹ Principally drawn from the Imago Dei and Kantian concepts of human dignity. As Jacques Maritain stated, human rights are 'owed to man because of the very fact that he is man'; Maritain (n 186) 65. Maritain was a prominent Catholic advocate in dignity and human rights development as a contributor to the birth of the Universal Declaration on Human Rights.

³¹⁰ Maritain (n 186) 65

³¹¹ 'Least rebuttable' because it is so widely considered in the literature. It appears to be the first consideration of human dignity in academic discourse, in law and in general discourse, perhaps equal only to autonomy.

Personal Inviolability as Dignity

This element of dignity appreciates the wholeness of the person, and the integrity of the individual. Acts which violate this element of a model of dignity involve disintegration. As Henry states, dis-integration involves the diminishing of the integrity of the person.³¹² The integrity of the person as personally inviolable is based on the premise of their inherent worth. Other modes of dignity violation such as humiliation,³¹³ point towards the existence of this element of dignity.³¹⁴ Unlike inherent dignity, this element can be violated, and to the point of total loss in the most extreme cases of inhuman or degrading treatment.³¹⁵

There are many synonyms for personal inviolability (PI), including 'bodily integrity', 'boundary integrity', 'bodily no-violation', 'personal boundary protection' and so on. In general it is easy to conceive of treatment which would breach PI such as rape or severe violent conduct. The main thrust of PI is that a person possesses a body, which need not be consistent of two arms, two legs etc. but possesses a body which is identified as human.³¹⁶ That body is inviolable by virtue of the inherent dignity of the person. It is not always about physical integrity but also about psychological, spiritual wholeness.³¹⁷ Since dignity inheres in human beings *qua* human, PI as dignity respects the wholeness of the individual.

³¹² See Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169. Dis-integration is also discussed at length by other scholars, including Avishai Margalit op cit

³¹³ The exclusive study of humiliation is relatively modern, and prominent research includes the work of Linda Hartling, in Linda Hartling, Tracy Luchetta, 'Humiliation: Assessing the impact of derision, degradation, and debasement' (1999) 19(4) Journal of Primary Prevention 259. See also Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) Journal of Primary Prevention 93. For humiliation and human rights, see Lindner op cit.

³¹⁴ I.e. Statman in Kretzmer and Klein op cit 211ff speaks about humiliation being a tool that actually indicates the presence of human dignity – i.e. it is illuminated by its violation.

³¹⁵ As explored, Article 3 ECHR is especially useful to highlight a legal grounding of the violation of human dignity, in degrading treatment. Inhuman and degrading treatment as they relate to and, at times, hinge upon human dignity, have been considered vis-à-vis Article 3 ECHR and the violation thereof, in the chapter 'Violating Dignity'.

³¹⁶ It is hard to conceive of a valid argument that, as in a case of extreme disability, one might not be considered completely 'human', even where the body is not recognisable as such. Any such legal arguments may rightfully be excluded as *de minimis non curat lex*.

³¹⁷ The soul (Greek *nooma*) is recognised as the persona of the individual. This may be transgressed by dignity violation of personal inviolability. Hence the colloquialism that 'rape is the murder of the soul', because it transgresses more than just the bodily integrity of the victim. This is discussed at length with regard to dis-integration of the person.

Autonomy as Dignity

Dignity is expressed and actually presents itself through agency and autonomous thought and or action. Henry terms this aspect of the concept of dignity as 'liberty as dignity'. She maintains that this element can be obtained and lost throughout one's lifetime – it is in this description of dignity that one who is unable to express certain traits would not qualify as possessing liberty as dignity.³¹⁸ '... [B]ecause it is capacity driven, dignity of this kind is contingent – one can gain or lose it over a lifetime. For example, young children and mentally incapacitated individuals do not qualify for liberty as dignity, but it is not foreclosed to them if and when they gain mental competence'.³¹⁹

It might be taken that autonomy should be considered as the *ratio essendi* for the possession of dignity – that autonomy is the cause or the one ground for the possession of human dignity, and this would certainly accord with a Kantian understanding of autonomy.³²⁰ This thesis maintains that autonomy is a fundamental representation of human dignity, whilst not being the sole cause for the possession of it. Personal inviolability and autonomy both provide individual representations of human dignity in the literature, with their own normative claims embedded within.

IPA informed by Henry's Model

Firstly, this proposed model of dignity is informed by the literature, and the broad concepts of dignity already presented. More specifically however, IPA is drawn from the model of dignity developed by Leslie Henry,³²¹ which was expounded in Chapter 6. Why was Henry's model considered so informative, and not, for example, the minimum core?³²² The answer to this methodological question is three-fold.

First, the model is fluid in its approach to dignity. Henry's approach dictates that a descriptive model of dignity cannot be a solid, immovable concept, but must remain open to revision. Secondly, the concepts are interrelated and overlapping, but also distinguishable from one

³¹⁸ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169, 208

³¹⁹ Ibid

³²⁰ I also take it that this is the view of Beyleveld and Brownsword in their approach to dignity.

³²¹ In Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169

³²² As the apparent corollary to Henry's model. This is both a point she enunciates and also one which is observable from reviewing each model.

another. Equally, keeping to the Wittgensteinian approach, it can be adapted contextually. Henry describes her approach:

This approach views dignity not as a concept, but as many conceptions. Dignity is not a fixed category, but rather a series of meanings that share a Wittgensteinian family resemblance. The types of dignity I discerned from the [US Supreme Court's] opinions are as distinct as individual family members are unique, but like siblings, they have overlapping characteristics. In contrast to the standard approach to conceptualizing dignity, these types cannot be combined to form a Venn diagram with an unchanging central core. The types are context sensitive, and an overlap that appears in one situation may not appear in another. ³²³

As will be clearer when the IPA model is given a normative framework, at the end of this chapter, how it is used to consider one social issue can be different to how it is applied to another one. This is important in that it can be malleable to unusual contexts. In this study, it will be applied to the prostitution encounter, but it might be later applied to a euthanasia issue, with very different considerations, as per the normative framework of Finnis, explicated shortly. This is an idea similarly articulated by Jürgen Habermas:

...the experience of the violation of human dignity has performed and can still perform, an **inventive function** in many cases...**in light of such specific challenges**, different aspects of the meaning of human dignity emerge from the plethora of experiences of what it means to be humiliated and be deeply hurt. The features of human dignity specified and actualized in this way can then lead both to a more complete exhaustion of existing civil rights and to the discovery and construction of new ones.³²⁴

Finally, the approach recognises the foundational legal status of human dignity underpinning human rights legislation. So IPA aligns well with the ideals of Henry's model, but as the next section explains, it is also distinct and unique.

³²³ Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169 188

³²⁴ Jürgen Habermas, 'The Concept Of Human Dignity And The Realistic Utopia Of Human Rights' (2010) 41(4) Metaphilosophy 464, 467-468 emphasis mine.

IPA distinguished from Henry's Model

Whilst Henry's model of dignity contains 'Institutional Status as Dignity', the IPA model does not adopt this element. To use this understanding of dignity in the same model as inherent dignity could not work, since dignity as inherent is distinct from a notion of a man-made form of dignity. A dignity which is bestowed upon persons for the status they accrue in their lifetime, or from rank or position in society seems to be at odds with inherent dignity, but this does not rule out the value we put on this status and apply, therefore, to ourselves and that can be harmed (i.e. reputation). Thus there may be a connection between status and our internalisation of dignity as 'self' or identity. Still, it is could be reasoned that this is a form of dignity which is earned, or even inherited. It is exclusive, and this runs against the idea of human dignity being all-inclusive.³²⁵

Equally, the concept of dignity being collective is recognised as persuasive, yet not incorporated into the model here, for the same reasons as the exclusion of institutional status as dignity. These themes cannot align appropriately alongside inherent dignity, and are therefore not used here. This collective dignity may operate in two ways - as 'commonly held' (inherent) means if in inherent in me then also must be inherent in you, or collective (communitarian) if 'assigned' through a general will, then not necessarily inherent.

The preceding chapters have presented the ongoing 'conversation' of human dignity in a few selected fields of academic research. Of course, IPA is not intended to, and obviously cannot be the final word on human dignity. It is part of the evolutionary process of deciphering a complex concept, and attempting to make use of it on the basis that it appears from the literature to have extraordinary value and international recognition. If such attempts are not made, that evolutionary process becomes stagnant or even comes to a halt. This would cause us perhaps to miss out on a unique approach to socio-legal issues such as prostitution.

Summary and Next Chapter

So far this thesis has constructed a model of human dignity which has been deduced from the literature on human dignity. IPA thus represents various discourses of dignity and the themes apparent therein, which centre on the concept of inherent dignity – as inalienable

³²⁵ It is understood why Henry includes this concept of dignity in her typology, and it is represented in the empirical data she presents. In this model, however, the idea is to found dignity on an understanding of inclusion and applicability to all peoples. The homeless child has the same quality of IPA dignity as the wealthy aristocrat. For further critique on dignity as 'rank', see Michael Rosen, 'Dignity: the Case Against' in Christopher McCrudden (ed), *Understanding Human Dignity* (OUP 2013)

individual worth, present equally in all humanity. As this chapter has expressed, IPA is useful to determine what themes dignity presents as. This is certainly in keeping with Henry's Wittgensteinian 'family resemblances' approach to language to determine what the themes of dignity.

Thus far this thesis has presented the study of human dignity in philosophical iterations and in legal models. The next chapter examines the idea of dignity violation, by examining and presenting different modes of dignity violation

8. VIOLATING DIGNITY

Now that the IPA model has been constructed, it is necessary to consider once more the Honeyball report. In the report it is suggested that prostitution amounts to a violation of human dignity. So far the thesis has concentrated on how dignity can be understood through the parameters of the IPA model. This provides some objective measure of human dignity which can be used to understand what is meant by the language of dignity adopted in the report. This fails to assist in identifying what it means for dignity to be 'violated' however. Using a standard definition of the term violation will not provide much scope for an analysis of the kind needed to address the hypothesis to this study. More is needed, and this will involve utilising research which has specifically focused on the violation of dignity. A review of the literature identifies a taxonomy that has will be applied to IPA dignity to help understand its violation. This chapter explores the proposition that human dignity can be violated by certain courses of action and presents these as various 'modes of dignity violation'. These modes of dignity violation will be identified and considered alongside the three elements of dignity presented in the model.

What is meant by "Violation"?

The term violation can have a number of normative interpretations, and so some refinement is needed to keep the scope of the examination limited to the methodology of this study, which is socio-legal. Therefore there are two particularly 'legal' iterations of the term 'violation', which will be explicated here. These are 'breach' and 'harm'. By considering these synonyms of violation, we can better understand what is meant in a legal mind-set, of the term 'violation'. Firstly, violation may be akin to the term 'breach'. This can be seen in the English law of tort, for example where the language of duty and its respective breach by a defendant is used in a claim of negligence. In the tort of negligence, there exists a duty which is owed by the defendant to the claimant. That duty may be breached by the defendant, which may or may not result in some damages being suffered by the claimant. What is true to say is that the duty, a special, perhaps fiduciary, relationship between the two parties, is violated because of that breach. Furthermore, that violation of the duty can amount to harm caused to the claimant.

We also see the term breach used in other areas of English law, but equally in international law, too; for example in human rights claims it is common to use the language of a 'breach' of rights. In a human rights case, a breach of rights is the result of an act or omission which

prevents the individual from enjoying a right they possess, or it might do something to someone which directly or indirectly infringes upon a right. If we consider again the Hohfeldian schema which was mentioned in chapter 4, individuals may possess various rights, consisting of claim-rights, powers, or liberties. They may also have duties. An example in the schema would be where Jill has a claim-right that Jack should perform X, if and only if Jack has a duty to Jill to perform X. Jill's claim-right is correlative to Jack's duty. In order to determine the rights of individuals as they interrelate in the Hohfeldian schema, certain questions must be asked.³²⁶ For the purposes of this example, if Jack does have a duty to Jill to perform X, and yet does not perform X, he has breached her claim-right. More extreme examples can be found in the Article 3 jurisprudence, in the next chapter. In those cases, there is a negative duty; that is *not to do* some act towards an individual. By then doing that act there is a breach of that right. Violation may be seen then as a form of breaching of rights, if it is to be interpreted as per human rights theory. In this sense, violation of rights can occur where actions are done which infringe a right, or are not done in infringement of a duty.

Another interpretation of violation is 'harm'. This will be recognised as based in criminal legal theory, and the work of Joel Feinberg is notable in this field. In reference to Feinberg's terminology for what he calls, 'the manner in which acts and other events affect interests when they harm them', or, as I will term it, 'modes of harm causation', he selects *violation*, as a mode of harm causation.³²⁷ The framework for this harm causation is the interest(s) of the 'wronged' party. Violation of an interest will harm that interest. Feinberg, at the beginning of this work, considers that harm, as per the 'harm principle'³²⁸ can be measured, inter alia as what 'wrongs' another person, or what thwarts, sets back or defeats an interest. With violation, it is the person's rights which are under invasion:

The term "violate" fits acts of harming in the "relatively narrow sense" that we will assign to "harm" as that work is understood in the harm principle. Harm in that sense

³²⁶ For example - Who are the parties who hold duties that give effect to Jill's right(s)? What is the content of that duty(s)? What is the identity of Jack as correlative claim-right holder? Under what condition(s) might Jill lose her claim-right, and what are (if any), the conditions under which Jill might waive her claim-right? What are the claim-rights, powers and liberties of Jill, in the event of non-performance of the duty(s)? What are the liberties of Jill, including a specification of the limits of those liberties (a specification of Jill's duties (if only), including of non-interference with the liberties of other claim-right holders of the same claim right, or of another recognized right(s)? What is the specification of the claim-rights of Jack?

³²⁷ Additional synonyms he uses for harm are thwarting, invading, impairing, setting back, defeating, impeding and dooming interests. Joel Feinberg, *Harm to Others: the Moral Limits of the Criminal Law* (OUP 1984) 52. It is supposed that mere expressions of disrespect for values such as personal integrity or autonomy, as elements of human dignity, would not in themselves constitute a violation; see T Khaitan, 'Dignity as an Expressive Norm: Neither Vacuous Nor a Panacea' (2012) 32(1) Oxford Journal of Legal Studies 1

³²⁸ See also John Stuart Mill, *On Liberty* (Longmans 1869). Mill speaks of criminalising only conduct which causes harm to another, not merely oneself. This harm principle thus serves to inform criminal legislation.

has two components, one a violation of the victim's rights (a wrong to him) and the other a certain deleterious effect on his interests, which we are here trying to make clearer. The word "violate" suggests the element of wrongfulness, but does not add anything to our understanding of the nature of the effect on interests. It is by no means an inappropriate term to use when characterizing wrongful harms, but it has no analytic power to explain what it is to have a damaging impact (wrongful or innocent) on interests. Natural events like fires and earthquakes cause harm in the purely interest-afflicting sense, but only persons acting improperly "violate" interests. Strictly speaking, it is the victim's *rights* that are violated when his interests are wrongfully damaged, and...rights can be violated even without harm to interests.³²⁹

For the purposes of this study, and the ensuing application, we consider violation legally as an amalgamation of the two expressions – both a breach of legal rights, and a measure of harm to interests. But there is a restriction on how we can directly apply these ideas to IPA dignity if we do not go further, since IPA dignity is not a collection of rights per se. It is perhaps most appropriate to consider violation of dignity not as a 'breach' thereof, but as some course of action which encompasses possible 'harm' to dignity, i.e. some course of action which is detrimental to human dignity. Chapter 10 will explore the concept of human flourishing as a reflection of human dignity, and in essence, violation should be seen as a course of action which is detrimental to that flourishing. For now, this chapter will consider what exactly dignity violation might look like, and for this, we need to go beyond the fairly bland legal understanding of violation, and consider some alternative approaches. As discussed in chapter 6, research from the health and caring sciences sector provides much depth and nuances of language used to consider the dignity of patients with degenerative illness. From this field we find research which examines ways in which a patient's dignity might be violated. It is to this research that we now turn in order to enrich our understanding of the concept of dignity and its violation.

A Taxonomy of Dignity Violation

Nora Jacobson's 2009 health and human rights research provides a unique 'taxonomy of dignity violation'.³³⁰ In order to identify violation of dignity, Jacobson sets out behaviours or

³²⁹ Feinberg op cit 52ff

³³⁰ Nora Jacobson, 'A taxonomy of dignity: a grounded theory study' (2009) 9(3) *BMC International Health and Human Rights* 1. Jacobson is not alone in producing such a taxonomy. Other scholars have also indicated what behaviours may be an affront to dignity. For instance, see Oscar Schachter, 'Human Dignity as a Normative Concept' (1983) 77(4) *The American Journal of International Law* 848-854 at 852, where he lists various ways in

acts towards others which demonstrate dignity violation. I will call these 'modes of dignity violation'. Her research identifies that there are a range of possible processes which occur in the experience(s) of the victim which could violate dignity, which I expand upon in what follows. There will also be consideration of ancillary ideas which align with Jacobson's research from some prominent authors. The principal objective of the remainder of the chapter is to flesh out the concept of violation in order that certain modes of dignity violation can be made visible, which will be utilised in the analysis later on.

Modes of Dignity Violation

Exploitation

Exploitation is defined in recent legislation as 'encouragement' or 'requirement',³³¹ and 'subjection to force, threats, abduction, coercion, fraud or deception'.³³² The relevant legislation provides protections for victims of human trafficking, and so that context is noted. It is helpful, however to consider what the legislature consider exploitation to be. Exploitation is 'using an actor or viewing him or her only as a means to an end',³³³ says Jacobson, akin to a Kantian categorical imperative ideal of dignity diminution. Much has been written, debated and reformed on exploitation particularly in the context of capitalist vs communist labour in Marxist theory,³³⁴ including some modern theories on 'needs exploitation', which provide more modern ideas of exploitation in the employer to employee relationship.³³⁵ In such theories, exploitation is in the context of the state's power over the working class. Marx introduces the term "exploitation" 'in the context of discussing the origin of capitalist profits...unpaid, surplus labor [sic]'³³⁶

As Holmstrom indicates, for Marx it was:

which dignity can be affronted. They include 'statements that demean and humiliate individuals or groups because of their origins, status or beliefs' and 'denial of the capacity of a person to assert claims to basic rights'. Unlike Jacobson's taxonomy, which has universal, (and thus capable of socio-legal) application, Schachter's appears to apply to specific human rights scenarios, such as imprisonment.

³³¹ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, s.3(4)

³³² Ibid, s.3(5)

³³³ Jacobson op cit 5

³³⁴ i.e. John Roemer, *A General Theory of Exploitation and Class* (Cambridge: Harvard University Press 1982)

³³⁵ Jeremy C Snyder, 'Needs Exploitation' (2008) 11(4) *Ethical Theory and Moral Practice* 389

³³⁶ Nancy Holmstrom, 'Exploitation' (1977) 7(2) *Canadian Journal of Philosophy* 353, 358

...not the fact that capitalists have some, or even a very large income that is exploitative. It is the fact that the income is derived through forced, unpaid, surplus labor [sic], the product of which the producers do not control, which makes it exploitative.³³⁷

For Marx, 'the essential difference between different exploitative systems lay only in the mode in which the surplus was extracted from the producers'. Holmstrom says that there are four features of exploitation: '...it is the production of a surplus, appropriated from the producers, uncompensated for, and forced'.³³⁸ In Sensat's estimation, there exist two frameworks of exploitation, the first of which consists of, in part individual theories of exploitative conduct, across which some ideas stand out. Firstly, 'an exploitative state is one in which some individuals benefit at the expense of others'.³³⁹ Second, 'whether a state is exploitative depends on whether a certain kind of alternative to that state is feasible'.³⁴⁰ The second framework is more akin to the context of the present study, and presents some important issues regarding the concept of exploitation when we think in sociological terms, towards human beings:

In ordinary contexts the term "exploitation" is often used to refer to a use of something which is either not a sort of use for which the thing was designed or otherwise fails to be a realization of an assumed nature or purpose of the thing. For example, one does not exploit a concert by attending it in the usual fashion even though one is using it as a **means to an end**, but one does exploit it by passing out fliers to the audience on their way out advertising one's clothing store down the street³⁴¹

The challenge to a negative realization of exploitation comes in Sensat's estimation, that 'one can exploit something in the present sense without acting in any way contrary to the realization of its nature, as in the case of nonharmful [sic] parasites for example'.³⁴² The second framework is more reliable than the first, because 'it does not suppose social neutrality...does not require exploitation to be a distributive phenomenon...[and] it avoids the pitfalls of relativity to the resource base'.³⁴³ This means that in this second framework of exploitation, Sensat considers that 'exploitation can take place even when there is no

³³⁷ Ibid 359

³³⁸ Ibid 360

³³⁹ Julius Sensat, 'Exploitation' (1984) 18(1) APA Western Division Meetings 21, 23

³⁴⁰ Ibid

³⁴¹ Ibid 33

³⁴² Ibid

³⁴³ Ibid

feasible alternative in which the exploited is better off, and innocence of material conditions is not presupposed³⁴⁴ It allows human beings to be exploited not only by others but also by institutions and social systems.³⁴⁵ So exploitation may occur even where there is no alternative to that exploitation. Perhaps then, it does not rely upon a specific intention to exploit, as may have been thought. Such unintentional exploitation may occur where, for example, the exploiter has the belief that the recipient or *exploitee* is not worthy of respect, or may not have an understanding of what according others with respect actually requires. In other words, unintentional exploitation may occur through ignorance on behalf of the exploiter, and/or the exploitee.³⁴⁶ This is very applicable to prostitution as an institution. One might consider that that sex workers might be exploited, not by the client, but by the social situation they find themselves in (and the legal policy which may be an additional burden upon them). Exploitation can take place without any particular directed intention by one party to another. Aligned with exploitation is trickery, which Jacobson says is ‘...taunting, lying, or manipulating for material gain or psychological advantage’.³⁴⁷ The emphasis is on the act of a party in providing false information to the victim, which causes them to do something [presumably] to the exploiter’s advantage. Exploitation, as discussed is applicable to inherent dignity because it is an affront to respect for humanity. In a manner similar to objectification, and dehumanization, it makes ‘use’ of persons which violates the special property of humanness that inherent dignity represents.

Objectification

This form of dignity violation is more specific than ‘objectification theory’, which is explained in one article as ‘[positing] that girls and women are typically acculturated to internalize an observer’s perspective as a primary view of their physical selves.’³⁴⁸ Objectification theory in feminist thought is described by Humm as ‘the primary form of the subjection of women’ making reference to Catherine MacKinnon. ‘It is the male epistemological stance’.³⁴⁹ Objectification theory research can be found principally in feminist thought on pornography.

³⁴⁴ Ibid 35

³⁴⁵ Ibid

³⁴⁶ Ruth J Sample, *Exploitation: What it is and why It’s Wrong* (Rowman & Littlefield 2003) 58

³⁴⁷ Jacobson op cit 5

³⁴⁸ Barbara Fredrickson, Tomi-Ann Roberts, ‘Objectification theory’ (1997) 21(2) *Psychology of Women Quarterly* 173, 173

³⁴⁹ Maggie Humm, *The Dictionary of Feminist Theory* (2nd edn, Prentice Hall/harvester Wheatsheaf 1995) 191

Here we speak about the treatment of one person to another, where the diminution of their very status as human results in diminution of their human dignity.

Therefore if a person is subjected to objectification, they are treated as if they are more like an object than like a human being, which can then lead to diminution of dignity. This is held by Jacobson as 'treating an actor like a thing, not a person'. Of particular relevance to this study, (since the taxonomy in question is written from a feminist [probably Gender and Male Violence] epistemological approach), is that of Martha Nussbaum, in her seminal work on objectification.³⁵⁰ Nussbaum outlines seven 'modes' of objectification, and explores these principally with reference to the work of prominent feminist writers, Andrea Dworkin and Catherine MacKinnon. This study focuses on the legal theory of human dignity applied to the social issue of prostitution, Nussbaum's taxonomy deals with the issues and ideas behind objectification in a sexual context, and so such a model is deemed suitable for this application.

The seven modes are as follows: *Instrumentality*: The objectifier treats the object as a tool of his or her purposes; *Denial of autonomy*: The objectifier treats the object as lacking in autonomy and self-determination; *Inertness*: The objectifier treats the object as lacking in agency, and perhaps also in activity; *Fungibility*: The objectifier treats the object as interchangeable a) with other objects of the same type, and/or b) with objects of other types; *Violability*: The objectifier treats the object as lacking in boundary-integrity, as something that it is permissible to break up, smash, break into; *Ownership*: The objectifier treats the object as something that is owned by another, can be bought and sold, etc.; and *Denial of subjectivity*: The objectifier treats the object as something whose experience and feelings (if any) need not be taken into account.³⁵¹

As Nussbaum points out, objectification will only occur where the *thing* being so treated is not already an object.³⁵² To each of the above, objectification occurs when the term 'object' in each example, is replaced by 'person'. The modes are mutually exclusive, but as she hypothesises, objectification will be clearer where more than one is clearly demonstrated.³⁵³ Some, in isolation would be difficult to prove 'complete' objectification; i.e. inertness, whilst ownership clearly completely objectifies the person 'owned'. There is also apparent overlap between modes, so, for example, ownership encompasses almost all the other six. This will

³⁵⁰ Martha Nussbaum, 'Objectification' (1995) 24(4) *Philosophy & Public Affairs* 249

³⁵¹ *Ibid* 257

³⁵² *Ibid*

³⁵³ *Ibid* 259-263

become more apparent as we review the individual modes in what follows. With instrumentality, one is used as a tool of another's purposes in perhaps a variety of ways.³⁵⁴ It might be argued that a professional football player is used as a tool of the football club's purposes. Objectification in this example is harder to prove perhaps, since the footballer is paid (often vast sums of) money to perform that role. So it is with many within an employee-employer relationship – the employee is utilised by the employer for their skills and abilities, manual labour, intellectual ability and so on. The employee is not objectified in the complete sense, because there is an element of autonomy which allows the employee the choice to leave that role. There is no 'ownership' in the sense here depicted.

Economic strains employees can face impact upon free choice, so it might be counter-argued that employees can be 'forced' into continuing their labour aside from their own desire. Now we turn to the denial of autonomy. As discussed in the previous chapter, autonomy is inextricably tied in with dignity, and together with democracy, forms part of the foundational 'spirit' of the European Convention on Human Rights. Denying one's autonomy provokes a sense of injustice. It is offensive to our preconceptions of living a life free from totalitarian control. In comparison to the first mode of objectification, when a person denies another person their autonomy, perhaps the latter is more greatly objectified than those used as instruments or tools of another's purpose alone. Also, denial of autonomy is inextricably linked with complete ownership. As mentioned by Nussbaum in relation to her word processor, an instrument which has no autonomy is not inert, but active, and yet still treated as an object. Slaves are not inert but are on the contrary, active and used as tools for the purposes of their owners.

With fungibility, the object is interchangeable with other objects deemed to be of the same type and worth. To treat persons as fungible denies that they are unique; that they are individuals, and instead that they are like a currency, to be exchanged without concern for their thoughts and feelings. As such, denial of subjectivity is clearly linked with fungibility. Violability denotes the violation of boundaries. Personal Inviolability in IPA is the protection of those boundaries, which may be physical or psychological. In this context bodily integrity is perhaps the most obvious, but it may be that other areas of normative inviolability can be infringed upon such as family/personal life. The issue of consent is probably important, although a violation occurs with or without consent. Consent merely provides some

³⁵⁴ See also Deryck Beylleveld, Roger Brownsword, *Human Dignity in Bioethics and Biolaw* (OUP 2001) 17

justification for the violation. Dis-integration is an offence to personal inviolability, and treats a party as violable.³⁵⁵

Ownership incorporates, *inter alia*, denial of autonomy. This is the strongest form of objectification. Ownership is '...by definition incompatible with autonomy'.³⁵⁶ With trafficking for sexual exploitation, or modern slavery, ownership of victims by pimps or criminal gangs and syndicates denies autonomy, and instrumentality, violability, fungibility and probably others. Ownership may be described in itself as objectification to the utmost degree. Finally, where the objectified person's experience and feelings are not considered to be taken into account or important, they may be objectified as they suffer a denial of subjectivity. Teela Sanders provides a useful critique of research which maintains that objectification occurs in all prostitution, all of the time:

Many of the critiques of the sex industry start from the premise that in commercial sex women's bodies, emotions and sexuality are commodified and objectified as sexual entities for the purpose of male pleasure (Scully 1990). The conclusions to this argument are that the female body becomes devoid of individualism through the process of objectification and therefore it appears as normal and legitimate to acquire the female body for a fee. The process of objectification is a necessary part of the separation between emotions, intimacy and sex. If the sexual partner (e.g. sex worker) is an object then it is possible to avoid feelings or be concerned with any wider issues of emotions, exploitation or ethics. There are two accounts on which this simplification of what happens in the sex industry can be challenged. First, the argument of objectification ignores that there are emotional aspects of the client-sex worker relationship, and second, some men give a low priority to sex and higher status to emotional connectivity, therefore resisting objectification³⁵⁷

Therefore, in considering Nussbaum's taxonomy of objectification, and in applying this to the sexual contract between sex worker and client, we must avoid making broad assertions that all prostitution encounters involve objectification in the sense described by Nussbaum. To do so would insult the subjectivity of the sex worker or the client in the exchange, and in so doing, actually objectify the person (denial of subjectivity). There also exists a significant

³⁵⁵ See Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169

³⁵⁶ *Ibid* 264

³⁵⁷ Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008)

problem with Nussbaum's model that must be rectified before moving forward. The model presupposes that only *treatment* is required to prove objectification, and so the actual experience of the party who is objectified is not considered relevant to that end. This presents a problem because to ignore the experience of the objectified person *in itself* objectifies that person. We ought to consider a modified approach to the model, whereby the treatment provides prima facie evidence of objectification to the degree that certain modes are identified, but then consider the experience of the sex worker, also.

Dehumanization

In addition to Jacobson's taxonomy, and akin to objectification, is dehumanization. This is the process by which a person is made to be less than human, sharing some characteristics with objectification, yet more towards the treating of individuals as not possessing the important emotional and physiological concerns that human beings have. In an article published in the Guardian in 2014³⁵⁸, George Monbiot highlights what dehumanization is with reference to dehumanizing language used by governments and society, and the seemingly pervious nature of such language into society. He states that 'a dehumanising system requires a dehumanising language', referring to the way in which human beings are converted into 'stock', 'resources' and even 'biomass'.³⁵⁹ Amidst apparent calls for the taxation of prostitution and other 'black market' products,³⁶⁰ how the state views those involved in prostitution at all levels is an important question to consider. It is precisely this elucidation towards denial of respect for humanity that makes dehumanization a dangerous concept, and one which will violate human dignity.

The prominent social psychologist Nick Haslam has explored the realms of dehumanization in a number of works.³⁶¹ This study follows from the assumption of Haslam that previous to his taxonomy, there existed no 'model' of dehumanization. Haslam offers his own model based upon two types of human-like attributes – Human Uniqueness (UH) and Human

³⁵⁸ George Monbiot, 'Cleansing the Stock' <http://www.monbiot.com/2014/10/21/cleansing-the-stock/> accessed 22nd October 2014

³⁵⁹ <http://www.nrk.no/hordaland/gjer-vanskeleg-uttrykk-forstaelege-1.10951646> accessed 22nd October 2014

³⁶⁰ See <http://www.theguardian.com/society/shortcuts/2014/oct/05/time-to-tax-prostitution-and-illegal-drugs-add-1227bn-to-the-economy> accessed 1st October 2014

³⁶¹ See Haslam (n 18); Paul Bain, Joona Park, Christopher Kwok, Nick Haslam, 'Attributing Human Uniqueness and Human Nature to Cultural Groups: Distinct Forms of Subtle Dehumanization' (2009) 12 *Group Processes & Intergroup Relations* 789; Steve Loughnan, Nick Haslam, Tess Murnane, Jeroen Vaes, Catherine Reynolds, Caterina Suitner, 'Objectification leads to depersonalization: The denial of mind and moral concern to objectified others' (2010) 40 *European Journal of Social Psychology* 709

Nature (HN). Human Uniqueness attributes 'are seen as distinguishing humans from animals...and involves refinement, civility, morality and higher cognition'.³⁶² 'Only humanity can perform the three indispensable functions: keep the record of nature, understand nature, and appreciate it.'³⁶³ It follows that the denial of Human Uniqueness attributes reduces human beings to a childlike, irrational state. Haslam states that therefore civility turns into lack of culture; refinement into coarseness; moral sensibility with amorality; rationality and logic with irrationality and instinct; and maturity with childlikeness.³⁶⁴ Of course the suggested elements of UH attributes are not possessed by nor demonstrated by all peoples all of the time. This clearly represents human beings at their 'best'.³⁶⁵

If a party perceives in the victim of dehumanization one or all of these five mal-behaviours, that victim experiences animalistic dehumanization. They are not thus objectified, but reduced closer to an animal-like status in the perception of the offending party. 'Being divested of UH characteristics is a source of shame for the target – often with a prominent bodily component, as in the nakedness of the Abu Ghraib prisoners – who becomes an object of disgust and contempt for the perpetrator...Disgust enables us to avoid evidence of our animality, so representing others as animal-like may elicit the emotion. Contempt, a kindred emotion plays a similar role, locating the other as below the self...'³⁶⁶

Haslam states that the denial of UH characteristics involves a devaluing of the victim below the same level of the offending party. The denial of Human Nature (HN) attributes is perhaps more severe, since HN attributes are those '...seen as shared and fundamental features of humanity, such as emotionality, warmth and cognitive flexibility'³⁶⁷. The denial of Human Nature attributes involves the likening of the person to an object or machine.³⁶⁸ Dehumanization can be seen as the inverse of the process of anthropomorphism;³⁶⁹ the

³⁶² Brock Bastian, Nick Haslam, 'Experiencing dehumanization: Cognitive and emotional effects of everyday dehumanization' (2011) 33(4) *Basic and Applied Social Psychology* 295, 296, *quoting*, Jacques-Philippe Leyens et al, 'Psychological essentialism and the differential attribution of uniquely human emotions to ingroups and outgroups' (2001) 31(4) *European Journal of Social Psychology* 395

³⁶³George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011) 114

³⁶⁴ Nick Haslam, 'Dehumanization: An Integrative Review' (2006) 10(3) *Personality and Social Psychology Review* 252, 257

³⁶⁵ Described as the 'arête' by Henry; Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169, 221

³⁶⁶ Ibid 258

³⁶⁷George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011) 296

³⁶⁸ Ibid

³⁶⁹ See Adam Waytz, Nicholas Epley, John T Cacioppo, 'Social Cognition Unbound: Insights Into Anthropomorphism and Dehumanization' 19(1) *Current Directions in Psychological Science* 58

attribution of human likenesses and worth to inanimate objects. It is ultimately a failure to attribute human-like capacities to human beings.³⁷⁰ HN attributes are akin then to inherent dignity, and a denial of recognition of these attributes will amount to a violation of dignity according to the IPA model.

Disintegration

An overarching theme of this mode of dignity violation is that of dis-integration of the person. This can take place in labelling and grouping, as discussed below, but also as a by-product of objectification and bodily dissociation. This mode is identifiable where the person as a fully integrated 'whole' is broken down into constituent parts.³⁷¹ Since modes contained under this group violate the emotional, psychological and bodily integrity of the person, treatment which disintegrates the person, whether that be through objectification or another means, will violate this IPA dignity.

Intrusion

Jacobson states that intrusion involves the '...transgressing [of] an actor's bodily or personal boundaries'.³⁷² In law, when we think of intrusion, it may be in the sense of physical or sexual violence. In rape for instance, it is the penetration of a person which intrudes upon their physical integrity, as well as the victim's psychological integrity. In fact, the especially cruel nature of rape, as defined in *Aydin v Turkey*,³⁷³ could meet the high threshold of torture under certain conditions. In the same way, assault, which is 'Using physical force to damage or demean an actor's body and the spirit'³⁷⁴ [or personality], and bullying, which is 'Threatening or intimidating an actor'³⁷⁵, will both transgress a victim's personal integrity, not only physically, but also psychologically and emotionally. But intrusion need not be as extreme as rape or physical violence. It might be that intrusion occurs where the usual standard set by a party is relaxed following pressure by the intruder, involving the personal

³⁷⁰ *Ibid* 59

³⁷¹ This is expressed by Henry *op cit*

³⁷² Jacobson *op cit*

³⁷³ *Aydin v Turkey* (1998) 25 EHRR 251

³⁷⁴ Jacobson *op cit*

³⁷⁵ *Ibid*

boundaries of the victim, not limited to emotions, but also in respect of religious or cultural standards being transgressed.

Labelling is ‘tagging an actor with a descriptive term that carries a connotation of moral deficiency or social inferiority’.³⁷⁶ It is easy to see the problem with labelling. It commits a person to a particular set of motives, behaviours and an image that are all thrust upon them by a third party. The third party, by labelling that person, takes charge of who the victim actually ‘is’, and redefines them. In the same way, grouping is tied with labelling, and involves ‘seeing an actor not as a unique individual, but only as a member of a collective’³⁷⁷.

To group would be to collect several people with similar characteristics, be they work or otherwise, and gather them under one title – i.e. ‘prostitutes’. As stated in the methodology chapter, this thesis avoids the use of the term ‘prostitutes’ where possible, in an attempt to avoid such grouping and stigmatisation. Of course, the label ascribed must be detrimental or insulting to violate dignity in this way – as Jacobson says, a label which is morally or socially deficient or inferior. Both labelling and grouping violate personal inviolability as dignity because they ‘dis-integrate’ that person.³⁷⁸ The focus becomes on an aspect or aspects of the person, who is not treated as a constituted ‘whole’, which violates their personal integrity. When considering what dis-integrates a person, then perhaps the labelling of a person as ‘prostitute’ or ‘sex-worker’ reduces them to that single trait. Perhaps in the same way, a sex worker is unable to express themselves in a way which presents them as a ‘unified, composed or collected whole’. Whilst this is not a bodily intrusion, it is an intrusion nonetheless upon the mind and soul of the victim.

Abjection

Abjection is, says Jacobson, ‘Forcing an actor to humble him or herself by compromising closely held beliefs or by forced association with material or practices considered unclean’³⁷⁹. The dictionary defines the term ‘abject’ as ‘completely without pride or dignity’. An example of abjection is given by Margalit, where he describes the treatment of Abu Ghraib prisoners by their captors. By being forced to commit indecent acts, the prisoners transgressed their valued religious belief systems. Readers interested specifically in

³⁷⁶ Ibid

³⁷⁷ Ibid

³⁷⁸ See also Leslie Meltzer Henry, ‘The Jurisprudence of Dignity’, (2011) 160(169) University of Pennsylvania Law Review 169

³⁷⁹ Jacobson op cit

abjection theory are directed to the key work of Julia Kristeva on abjection,³⁸⁰ as well as critiques of the feminist/maternal stances underpinning Kristeva's theory.³⁸¹

Humiliation

This type of mode of dignity violation degrades the victim and lessens his or her worth. This is an 'attack' upon the integrity of the person, and might be coupled with 'dis-integration'.³⁸² The term humiliation derives from 'humus', or earth.³⁸³ As Lindner identifies, 'it entails a downward orientation, literally a "de-gradation"'.³⁸⁴ Links are clearly drawn between the two concepts here - to humiliate is to degrade an individual; to 'de-grade' is to reduce their status, to lessen their worth; to lessen a person's worth is to diminish their inherent human dignity. Studies in personal disintegration are to be found inter alia in mental health journals, where depersonalisation and disintegration are coupled.³⁸⁵ This research informs of the deleterious nature of disintegration in psychological harm. In the same vein, it is said that humiliation produces in a person a very real experience of pain and suffering.³⁸⁶ What, then does it mean to humiliate or debase an individual? Following an apparent absence of 'conceptual or empirical scrutiny',³⁸⁷ studies have been conducted which aim to answer this question in a scientifically meaningful way. Donald Klein provides an early analysis of humiliation, which will be discussed shortly. And so it appears that a harmful cycle begins from humiliation.

³⁸⁰ i.e. Julia Kristeva, *Powers of Horror: an Essay on Abjection* (Translation by Leon Roudiez) (Columbia University Press 1982)

³⁸¹ Imogen Tyler, 'Against abjection' (2009) 10(1) *Feminist Theory* 77

³⁸² Leslie Meltzer Henry, 'The Jurisprudence of Dignity', (2011) 160(169) *University of Pennsylvania Law Review* 169

³⁸³ i.e. Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) *Journal of Primary Prevention* 93 and Lindner op cit

³⁸⁴ Lindner Ibid 51

³⁸⁵ A M Freeman 3rd, Frederick T Melges, 'Depersonalization and temporal disintegration in acute mental illness' (1977) 134(6) *The American journal of psychiatry* 679; A Bedford, G A Foulds, B F Sheffield, 'A new personal disturbance scale (DSSI/sAD)' (1976) 15(4) *British Journal of Social and Clinical Psychology* 387

³⁸⁶ See Linda Hartling, Tracy Luchetta, 'Humiliation: Assessing the impact of derision, degradation, and debasement' (1999) 19(4) *Journal of Primary Prevention* 259 and Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) *Journal of Primary Prevention* 93

³⁸⁷ See Walter Torres, Raymond Bergner, 'Humiliation: Its Nature and Consequences' (2010) 38(2) *The Journal of the American Academy of Psychiatry and the Law* 195; Lindner op cit

In a slightly outdated, (mentions of 'coloured people' for example, are no longer socially acceptable terms, yet are used throughout) but still pertinent piece, Donald Klein explains the existence in his view of the 'Humiliation Dynamic' as a 'powerful factor in human affairs' which purveys human society.³⁸⁸ Klein posits that it is key in the oppression of minority groups, and includes the very fear of being humiliated. It is asserted, as in a number of works on humiliation that being humiliated leads to violent, and other destructive behaviour.

Klein defines humiliation as 'involv[ing] the experience of some form of ridicule, scorn, contempt, or other degrading treatment at the hands of others' and is '...intensely painful'.³⁸⁹ There is no doubt that the court in *Pretty* was speaking of humiliation as such an experience. Klein alludes to Lazare's earlier identification of five key characteristics in a humiliating experience: visual exposure, i.e. feeling blemished, exposed, or stigmatized (ties together with D Shapiro's idea of 'nakedness' in the experience); feeling reduced in size, i.e. feeling belittled; being found deficient, i.e. feeling degraded, dishonoured, or devalued; being attacked, i.e. experiencing ridicule, scorn or insult; an avoidant response, i.e. wanting to hide one's face or sink into the ground.³⁹⁰ Perhaps similarly to the objectification taxonomy of Nussbaum, in a humiliating experience, not all five have to be present, but the presence of all five factors indicates a particularly humiliating experience. In the context of prostitution, the invasion of the self is an important factor. 'To be humiliated is to have your personal boundaries violated and your personal space invaded.'³⁹¹

There are potentially three parties to a humiliating experience: the *humiliator*, who is responsible for inflicting the treatment; the *victim*; who suffers the treatment which is humiliating; and the *witness*; who observes the treatment and agrees that it is humiliating.³⁹² However, the humiliating experience does not need the *witness* for it to be humiliating. For instance, a rape victim suffers humiliation despite the act being carried out in private, with no audience, although the presence of an audience may cause a higher level of humiliation than when one is not present (specific research has been carried out which addresses this issue).³⁹³

³⁸⁸ Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) Journal of Primary Prevention 93

³⁸⁹ Ibid 2

³⁹⁰ Ibid 4; alluding to Aaron Lazare, 'Shame and humiliation in the medical encounter' (1987) 147 Archives of Internal Medicine 1653

³⁹¹ Donald Klein op cit 6

³⁹² What is termed by Klein as the 'Triangle of Humiliation', Ibid 9

³⁹³ Although not peer-reviewed, this research is persuasive: Eelke V Driel, "What humiliation feels like in different contexts" (Masters Thesis, University of Amsterdam, 2011) <http://dare.uva.nl/cgi/arno/show.cgi?fid=352633> accessed 7th September 2015

As mentioned, Daniel Statman in his article on human dignity explains that it is by recognising humiliation that dignity is illuminated. Thus the assertion made is that the humiliation of an individual causes their dignity to be visible and brought to the fore. Statman explores dignity vis-à-vis humiliation and self-respect. In links with debasement and humiliation as mentioned in judicial reasoning of Article 3 cases, he argues that 'humiliation is seen as first and foremost an injury to the dignity of its victims...' This mode of thought helps to link between the philosophical concepts of dignity as propounded, and the purposive reasoning of the courts in dealing with cases of mistreatment, where Article 3 rights are potentially affected. It is Statman's position that humiliation could be used to interpret dignity, rather than the other way around; 'the down to earth understanding of humiliation might provide us with a down to earth understanding of dignity, too'.³⁹⁴ Margalit holds also that it is through negative politics, that we find dignity - by finding that humiliation has taken place, we can identify human dignity.

To degrade a human being to an utterly arbitrary will means that this human counts for nothing, and counting for nothing as human beings is the very essence of humiliation. Because we understand humiliation better than we understand the idea of positive human dignity, we should adopt negative politics: preventing humiliation rather than promoting the positive politics of promoting dignity.³⁹⁵

Margalit proposes also, that humiliation can be determined not necessarily by the result of the humiliated person's feelings, but by 'any sort of behaviour or condition that constitutes a *sound reason* to consider his or her self-respect injured'³⁹⁶

Humiliation requires the imposition of a collaboration between the perpetrator and the victim. The victim should recognize that his tor-mentor is expelling him from the human commonwealth. Thus "nor-mal" [sic] humiliation requires the continued existence of a victim as some-one who can recognize the fact that he is being humiliated. While there is a destructive element in humiliation, there is a tension between humiliation and destruction, for humiliation seeks to destroy some part of the humiliated person without destroying that person.³⁹⁷

³⁹⁴ Statman in Kretzmer and Klein op cit 227

³⁹⁵ Avishai Margalit, 'Human Dignity between the Kitsch and Deification' (2004-5) Essay given at Litowitz Lecture, Yale University October 14th 2004. See also Peter J Duffy, 'Article 3 of the European Convention on Human Rights' (1983) 32(2) *The International and Comparative Law Quarterly* 316, specifically at 319 in a discussion regarding degrading treatment in Article 3 ECHR.

³⁹⁶ Avishai Margalit, *The Decent Society* (Harvard 1996) 9 (emphasis mine)

³⁹⁷ Avishai Margalit, 'The Uniqueness of the Holocaust' (1996) 25(1) *Philosophy and Public Affairs* 65, 74

As Schachter states, 'nothing is so clearly violative of the dignity of persons as treatment that demeans or humiliates them'.³⁹⁸

Summary and Next Chapter

This chapter presented various modes of dignity violation. These were exploitation, objectification, dehumanization, humiliation, abjection, disintegration, and intrusion. This is not an exhaustive list and not intended to be. The chapter's purpose has been to provide the language of violation of dignity according to the socio-legal methodology of this study. The deleterious nature of these various modes of dignity violation upon IPA dignity has been discussed. Each mode may violate human dignity in a mixture of ways, so that certain modes will violate one's autonomy, or one's personal inviolability. The next chapter continues but narrows the discussion of dignity violation further by returning to Article 3 ECHR, which was introduced in chapter 5. Now there will be an examination of how violations identified in Article 3 jurisprudence could in-turn relate to violation of IPA dignity. The overall purpose of the next chapter is to provide further legal and judicial impetus for a normative application of the IPA dignity model, the measure of dignity violation through the modes here expounded, and the ensuing application of IPA to the narratives taken from the sociology of prostitution.

³⁹⁸ Oscar Schachter, 'Human Dignity as a Normative Concept' (1983) 77(4) The American Journal of International Law 848, 850

9. IPA AND DIGNITY VIOLATION IN LAW

This chapter continues the discussion on dignity violation, by exploring judicial recognition of the violation of dignity. The themes of dignity which are represented in the IPA model are apparent in the case law of the European Court of Human Rights, in its implementation of the protections accorded under Article 3 of the European Convention on Human Rights (ECHR), which was considered in Chapter 5. Article 3 cases present issues that clearly engage dignity. The IPA model's veracity is emphasised through this chapter, since it can be seen that dignity violation is judicially recognised, and the chapter will outline some of the situations in which the court has identified and confirmed that the violation of dignity is akin to breaches of Article 3. Here there will be consideration of a variety of cases that indicate degrading treatment, and thus violation of human dignity.³⁹⁹ These will be related to IPA dignity through modes identifiable in the respective judgments, and dignity violation suggested, according to the relevant elements of IPA. Conclusions will be drawn as to the nature of IPA dignity violation vis-à-vis the modes identified in the previous chapter, caused through the respective Article 3 violations.

Article 3 Violations and modes of dignity violation

The cases which follow are grouped into three separate types of Article 3 case. These cases are pertinent to an analysis of how violation of Article 3 might equate to violation of dignity, and how this might occur utilising the modes, and the IPA model of this study. This analysis begins with selected so-called 'detention' cases, followed by corporal punishment and then sexual assaults. Not considered here are immigration and extradition cases, for the sake of brevity and because they exceed the scope of the thesis.

Prison Detention and Treatment of Prisoners

*Valasinas v Lithuania*⁴⁰⁰ concerned a detainee in a Lithuanian prison, who complained that his detention conditions and also a strip search he was subjected to, amounted to a breach of Article 3. The applicant alleged that the prison conditions were such that they amounted to

³⁹⁹ Cases reviewed are presented in a table in Appendix A which sets out the type of case and the decision of the Court.

⁴⁰⁰ [2001] Prison LR 365

infliction of degrading treatment upon him; a contention which was not (on this occasion⁴⁰¹) allowed by the Court. The second part of the application was successful, however. This related to an intimate search (including of the genitals of the complainant) in the presence of a female prison officer, where the officers carrying out the search did not use gloves throughout the examination. This did amount to degrading treatment under Article 3. The Court found that although intimate searches are necessary in certain circumstances, they must be carried out appropriately, and not in a manner that would likely offend the prisoner's dignity. In this case, the search had breached that threshold and was degrading. The court in this case referred to dignity in respect of humiliation and debasement, and behaviour which might cause the victim anguish or making him feel inferior:

Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him.⁴⁰²

Behaviour which debases is an 'attack' upon the integrity of the person, and causes humiliation. Reference is made to the previous section and humiliation. Humiliation is a mode which violates personal inviolability as dignity in IPA. Therefore, it is asserted that in *Valasinas*, the violation of Article 3 amounted to a violation of IPA dignity, namely the second element thereof. In another prison/detention case, *Keenan v United Kingdom*,⁴⁰³ the Court considered whether detention conditions were degrading. The Court, having regard to, inter alia *Ireland*⁴⁰⁴ and *Tyrer*⁴⁰⁵, considered that punishment or treatment would be 'degrading' if 'its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned it adversely affected his or her personality in a manner incompatible with Article 3'.⁴⁰⁶ The Court also said that in assessing whether the treatment or punishment crosses that threshold, it should consider in the case of mentally ill persons, (Keenan was mentally ill) their 'vulnerability and their inability, in some cases, to complain

⁴⁰¹ N.B. *Alver v Estonia* (2006) 43 EHRR 40 (distinguished)

⁴⁰² [177]

⁴⁰³ *Keenan v United Kingdom* (2001) 33 EHRR 38

⁴⁰⁴ *Ireland v United Kingdom* (n 222)

⁴⁰⁵ *Tyrer v United Kingdom* (1979-80) 2 EHRR 1

⁴⁰⁶ *Keenan* (n 449) [110]

coherently or at all about how they are being affected by any particular treatment'.⁴⁰⁷ The Court found that Article 3 had been breached in that case.

This case concerned prison conditions and the effect which these had upon the wellbeing of the victim. The court considers humiliation to be the key factor in its deliberation in favour of the victim. It is proposed that inherent dignity is also violated here through dehumanization. This is through a denial of the victim to Human Uniqueness (UH) attributes. When UH attributes are denied, humans are not treated as distinguishable from animals in the way in which they are treated. By keeping a prisoner in detention conditions likely to debase and humiliate them, UH attributes may be denied which leads to dehumanization. Keenan, having suffered violation of Article 3 suffered a violation of his inherent and personal inviolability as dignity, according to IPA.

Corporal Punishment

*Tyrer v United Kingdom*⁴⁰⁸ is unique in this discussion because this is a case of *punishment*, rather than *treatment*. The court indicated that as this was a punishment, which would by its nature be to some extent humiliating, there had to be an extenuating degree of humiliation to reach the threshold of 'degrading' punishment.⁴⁰⁹ In *Tyrer*; a case which was heard in the same year as *Ireland*, the Court held the United Kingdom in partial breach of Article 3, this time for an act of judicial corporal punishment in the Isle of Man. In this case, a juvenile was sentenced to three strokes of the birch – a sentence then prescribed in the Petty Sessions and Summary Jurisdiction Act 1927. The sentence was carried out in accordance with the law but an application was made by Mr Tyrer that the Court should consider his punishment to be in breach of Article 3.

The applicant was challenging not excessive, extra-judicial violent behaviour, but the entirely lawful infliction of violence preserved in statute. The Court examined the Article in order of severity of treatment, first with torture, then inhuman treatment and finally degrading treatment. The Court found that no torture had been committed, nor had Mr Tyrer suffered inhuman treatment. On a vote of six to one however, the Court held for Mr Tyrer, that his punishment has been degrading within the meaning of the Article.

⁴⁰⁷ Ibid [111]

⁴⁰⁸ *Tyrer v United Kingdom* op cit

⁴⁰⁹ [30]

In reaching their decision, the Court noted that the punishment was carried out with Mr Tyrer's posterior being naked, and administered by three complete strangers - factors which contributed to the Court's finding, although which were not in themselves the *ratio* of the decision.⁴¹⁰ As with *Valasinas*, in the judgment of this case specific reference was made to the humiliation suffered by the victim of the Article 3 violation of degrading treatment:

...the humiliation or debasement involved must attain a particular level...The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution.⁴¹¹

There had to be a distinguishing level of humiliation in this case extending beyond the 'ordinary' humiliation suffered as a result of corporal punishment, and in this case, that level had been met because of the circumstances surrounding the experience of this particular victim. Humiliation is certainly a factor here, but also intrusion, another personal inviolability grouped mode of dignity violation. Mr Tyrer therefore suffered a violation of his IPA dignity, through this second element, as in *Valasinas*. Corporal punishment was to be examined again in the case *Costello Roberts v United Kingdom*⁴¹², which involved a pupil being 'slipped' by the school headmaster. The court in this case, contrasted the facts with those in Tyrer;

Three smacks on the buttocks, through shorts, with a soft-soled shoe, apparently causing no visible injury, cannot be compared to the thrashing suffered by Anthony Tyrer when he was birched as a form of judicial corporal punishment⁴¹³

This was an intriguing analysis of the different elements of dignity violation experienced by Mr Tyrer and the pupil in the latter case. Was the latter experience any less degrading? The court apparently only adjudged the severity of the violence administered, not the potential emotional or psychological fallout of the two events. If the court had taken a literal approach and considered the dictionary definition of degrading as above, then they might have come to a different conclusion.

⁴¹⁰ [33], [35]

⁴¹¹ [30]

⁴¹² (1995) 19 EHRR 112

⁴¹³ At para 42

Certainly, the type of punishment described above in *Costello Roberts* might cause the pupil to lose self-respect, which would be degrading treatment under the literal meaning of the word. Accordingly, no breach of Article 3 was found in this case. If it were on the grounds of humiliation as per *Tyrer*, then similar results could be found regarding the violation of IPA dignity.

Sexual Assaults

In *SW v United Kingdom; CR v United Kingdom*⁴¹⁴; conjoined appeals to the ECtHR, the Court considered applications that Article 7(1) had been breached by the Respondent United Kingdom, in enacting retrospective legislation relating to the crime of rape. The cases related to marital rape, where the developing common law had begun to erode immunity from prosecution for husbands who had raped their wives. Aside from this main issue, the Court had cause to consider the character of rape itself. The Court stated that the essentially debasing character of rape was manifest, that the abandonment of the 'unacceptable idea' of spousal immunity was required to respect human dignity and human freedom.⁴¹⁵ Whilst the Court did not explicitly deal with Article 3 or relate the case to it, the wording of the judgment indicated that rape was of an essentially debasing nature. The definition in *Ireland* of degrading treatment is that which causes humiliation and debasement.

The Court was edging nearer towards a link between rape and IDT – a link which would be established only two years later in *Aydin v Turkey*.⁴¹⁶ *Aydin* was a landmark case because it classified the crime of rape as torture under the Article, on the facts in that case. The complainant/applicant in *Aydin* had been detained by state officials, and repeatedly mistreated and raped. It was the combination of those circumstances and actions that equated to a breach of Article 3, and a particular focus on the crime of rape. The Court held:

[t]he accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention⁴¹⁷

⁴¹⁴ (1996) 21 EHRR 363

⁴¹⁵ At [44], [42] of the judgment

⁴¹⁶ (1998) 25 EHRR 251

⁴¹⁷ [88]

The act of rape alone may not have constituted torture, but the combination of the circumstances, and the official status of the perpetrators went towards such a classification. Clare McGlynn is of the opinion that rape in this case would have been ill treatment alone, which was escalated to torture owing to these circumstances.⁴¹⁸ She argues that the Court established in *Aydin* 'that an act of rape could satisfy the threshold of harm for torture, but implied that not all rapes will necessarily do so'⁴¹⁹ As demonstrated, rape will always be sufficient for degrading treatment, but will not necessarily be sufficient for torture. Rape amounts to a severe intrusion and transgression of bodily and psychological integrity. It will certainly be degrading and violate personal inviolability as dignity. It will also amount to the MOV of objectification, through the means of instrumentality and denial of subjectivity, for example. It will violate inherent dignity as a result.

The Court in *MC*⁴²⁰ did not consider rape as torture or IDT *per se*, but it examined States' positive obligations under the Article to prosecute crimes of rape. What the Court did mention was the importance of an individual's sexual autonomy, and the 'effective protection' thereof by providing a rigid approach to prosecuting sexual offences.⁴²¹ The judgement made an interesting observation also; '...the development of law and practice in [sexual offences law] reflects the evolution of societies towards effective equality and respect for each individual's sexual autonomy'.⁴²² The Court indicated an evolutionary trend placing higher emphasis on sexual autonomy and freedom from sexual violence.

Summary and Next Chapter

The purpose of this chapter was to illuminate examples of Article 3 violations, which serve to demonstrate that the court will draw links between humiliation, debasement and the transgressing of bodily and psychological integrity as capable of amounting to at least degrading treatment under the Article. As has been explicated, these violations amounting to degrading treatment also amount to violations of IPA dignity through various modes, affecting multiple elements of IPA. This leads to the conclusion that dignity violation is, certainly in a human rights context judicially recognised and provides legal authority and context to the premise of the construction of the model of dignity, based upon the core

⁴¹⁸ C McGlynn, 'Rape, torture and the European Convention on Human Rights' (2009) 58(3) *International & Comparative Law Quarterly* 565-595, 576

⁴¹⁹ *Ibid* 579

⁴²⁰ *MC v Bulgaria* (2005) 40 EHRR 20

⁴²¹ *Ibid* [166]

⁴²² *Ibid* [165]

themes, human rights theory and law and models previously adopted. This chapter concludes Part 2 of the thesis, and has related the jurisprudence of Article 3 ECHR to violation of IPA dignity. The study has now presented human dignity, developed IPA dignity and demonstrated how that dignity might be violated.

According to the Honeyball report, prostitution amounts to a serious violation of human dignity. We have now provided a model for dignity which enables some of that statement to be objectively assessed. We could consider the statement as 'prostitution violates dignity (as inherent dignity, autonomy as dignity and personal inviolability as dignity)'. Further, we can say that when the report speaks of that dignity being violated, it is because prostitution allegedly amounts to exploitation, objectification, humiliation etc. as modes of dignity violation which are necessarily deleterious towards IPA dignity. But the question of whether prostitution can amount to any of these modes of dignity violation cannot be answered before an analysis of the sociology of prostitution which will take place in chapter 11. Indeed, no attempt to consider prostitution as either dignity violating or promoting should take place without a thorough consideration of the issues involved.

Before that is performed, however, the next chapter will move the thesis into part 3, and will provide a final part to the development of IPA dignity, which is a normative framework. If we are considering the statements of the Honeyball report with any true concern for the motives behind it, or the suggestions it makes for policy change in the area of prostitution, then a descriptive model of dignity is limited. What is the normative 'call to action' which demands that we should care whether prostitution violates dignity or not? Why does the hypothesis question matter at all? The answers to these questions will now be considered, in the next chapter.

PART THREE

10. A NORMATIVE FRAMEWORK FOR IPA DIGNITY

The IPA dignity model, now constructed operates as a kind of lexicography of dignity which provides an understanding of what is meant when the language of dignity is used. The study has also examined ways in which dignity might be violated, looking at modes of dignity violation and examining the jurisprudence of Article 3 ECHR. Of course, there are many alternative ways in which dignity might be understood, but IPA represents generally agreed themes of dignity, as discussed previously. If we are to address the hypothesis question, a model of dignity is required to set the parameters of the language of dignity. The Honeyball report uses the language of dignity to comment on the apparent deleterious nature of prostitution (and sex trafficking). If IPA dignity is the model by which dignity is expressed and understood, then the Honeyball report might be read to say that 'Prostitution is a very obvious and utterly appalling violation of human dignity, that is it violates inherent dignity, autonomy as dignity and/or personal inviolability as dignity'. In this way, IPA dignity may tell us what we collectively mean when we use the language of dignity, what it most reasonably consists of, and how it is generally perceived and understood.

However, for the purposes of this thesis, this cannot be the end of the enquiry into the conceptualisation of human dignity. There exists a problem moving forward if the study is to continue to address the hypothesis question using IPA, and the problem surrounds the purely descriptive nature of the IPA dignity model which is presently constructed. IPA consists of 3 elements which are themselves core 'themes' of dignity, but each of those themes carry their own values, interpretations and may potentially conflict. For example, there are many ways in which autonomy and personal inviolability may be understood, some of which may conflict with each other, as will be shown. Moreover, stating that prostitution violates human dignity, as presented in IPA, provides no objective normative basis as to why we should care, and in so doing, fails to properly address the hypothesis question by adequately addressing the perceived lack of objectivity in the Honeyball report. It is one thing to explain that dignity may be represented by a model which contains the elements demonstrating it to be inherent, as autonomy and as personal inviolability, and yet another to suggest that we *ought* to preserve, protect, respect or otherwise not negatively impact upon that IPA dignity (or any element thereof). In natural law theory, this is what is termed the 'is/ought' distinction, and it is through natural law theory that the conflict between the two is tackled. This chapter considers the 'ought' element of the problem, and presents a specific

normative framework by which there can be a ‘call to action’ not to violate dignity that the Honeyball report seems to want.

Adopting a Normative Framework for IPA dignity

If the ensuing analysis identifies that prostitution violates the respective elements of IPA dignity, what normative reference can and should be used to account for how dignity is actually violated and, from this, offer a principled objective reason and direction for the law’s (vis-à-vis the Honeyball report and subsequent policies to criminalise prostitution) engagement with prostitution? This leads to a discussion of potential frameworks, and the adoption of one which will be specifically used in this study to address the hypothesis question. It might be surmised the approach of Honeyball’s is to consider dignity violation vis-à-vis prostitution through a traditional criminal legal lens which is overtly moral, but without clearly defined moral-philosophical boundaries. This may be problematic as will now be explained.

The criminal law has traditionally engaged with prostitution in a certain way, and in effect, tried to ‘understand’ and control it. In so doing, it has presented a kind of moral reflection on the prostitution encounter, which is evidenced in the language used in the common law and statute over the past century. The earliest twentieth century case to define prostitution and the sex worker was in 1918. In *R v De Munck*⁴²³ the term ‘common prostitute’ was coined and defined as:

...not limited so as to mean only one who permits acts of **lewdness** with all and sundry, or with such as hire her, when such acts are in the nature of ordinary sexual connection. We are of opinion that prostitution is proved if it be shown that a woman offers her body commonly for **lewdness** for payment in return.⁴²⁴

The term ‘lewd’ is described as ‘crude and offensive in a sexual way’,⁴²⁵ and so it follows that for the court in *De Munck*, prostitution is the payment for sex which is crude and offensive. The terms ‘crude’ and ‘offensive’ are subjective terms, couched in morality, without grounding in any specific objective moral criteria. The definition provided in the case demonstrates a ‘narrowness’ and limited applicability in the 21st Century as a truly ‘complete’ legal definition of prostitution, but also it indicates that such a criminal law approach fails to

⁴²³ [1918] 1 KB 635

⁴²⁴ Ibid at 637-638, per Darling J (Emphasis mine)

⁴²⁵ OED 819

offer an objective framework to assess prostitution. The case *DPP v Bull*,⁴²⁶ reported as recently as 1995 extended the definition from *De Munck* to encompass male as well as females in prostitution. This demonstrated an advance in how prostitution was perceived, but still contained some problematic language, i.e. the use of the term 'lewdness', to describe the activities involved in prostitution.⁴²⁷ This somewhat subjective moral assessment of prostitution is continued in the Home Office report *Paying the Price*⁴²⁸ in 2004. Classifying those working in prostitution has been problematic, too. It was held in *Morris-Lowe*, following *De Munck*, that a 'common prostitute' is a woman who 'is prepared for reward to engage in acts of lewdness with all and sundry, or with anyone who may hire her for that purpose'.⁴²⁹ Webb⁴³⁰ presented a slightly more innovative definition, as it was held that there need be no physical contact between a man and a woman for prostitution to occur. In that case, it was held that all that is required for the commission of prostitution is for a woman to be paid for an 'indecent act' (or sexual service). Words such as 'indecent', however, still possess subjective moral overtones which are unsuited to a thorough analysis of prostitution. Parliament has addressed these deficiencies in recent years, and, for example, the stigmatising term 'common prostitute' has since been replaced by 'person', in legislation such as s.1 of the Street Offences Act, following the Government's coordinated prostitution strategy.⁴³¹ The reasons for the change were clear:

The clause amends the offence of loitering or soliciting for the purpose of prostitution, as set out in section 1 of the Street Offences Act 1959. It removes the term 'common prostitute'... Perhaps the only area of unanimity — at least there was one — was support for removal of the term 'common prostitute' from the statute, as it is outdated and offensive. The clause therefore removes the term.⁴³²

And so it can be seen that the criminal law has approached prostitution with strong moral overtones, which may or may not be entirely subjective. The legislators may be driven by

⁴²⁶ [1995] QB 88

⁴²⁷ Given the sociology of prostitution which is examined in Chapter 11, 'lewdness', as with the term 'crude', is perhaps an unclear representation of the experiential reality of prostitution for some sex workers and clients. This moral language is discussed in Chapter 10.

⁴²⁸ Home Office, 'Paying the Price: A Consultation Paper on Prostitution' (2004) London: Home Office Communication Directorate

⁴²⁹ [1985] 1 ALL ER 402

⁴³⁰ [1964] 1 QB 357

⁴³¹ Amended by s.16(2)(a) Policing and Crime Act 2009

⁴³² Hansard, HC Public Bill Committee, 9th Sitting, col.318 (February 10, 2009)

public opinion or perceptions of the 'rights and wrongs' of prostitution. It is true that these provide one perspective, but are naturally prone to the weaknesses of subjectivism, as the critics of the Honeyball report point out. Therefore, in this study, criminal law will not be utilised as the framework to address the violation or otherwise of dignity in the prostitution encounter.

A normative framework will necessarily be based in natural law theory, which is the epistemological basis of this study, as explained in part 1. Such a framework for IPA must achieve two aims: firstly, it must identify with the elements of IPA; and secondly it should justify the promotion of those elements – the aforementioned 'call to action'. Thus the framework which is adopted should consist of a scheme which appropriately fits with IPA dignity, vis-à-vis its constituent elements. The framework used should therefore recognise the value of human dignity, and call to all persons to respect, preserve or even promote it, and certainly never to violate it.

Amartya Sen and Martha Nussbaum have made individual and collective efforts to promote what are termed 'human capabilities', and in so doing, their work provides some insight into what amounts to a life consistent with an expression of human dignity. A life which is consistent with human dignity (IPA dignity), is one where human agents are accorded the capabilities necessary to make choices about how they will work, where they will live, what religion they will or will not adhere to, access to education and other fundamental 'goods' which lead to a life of dignity, or a life which might also be termed a flourishing life.⁴³³ And it is this concept of a flourishing life which it is asserted aligns well with human dignity, and with the IPA dignity model, since, according to Nussbaum, for instance, where one is afforded capabilities, their autonomy as dignity is certainly promoted or respected. The language that starts to emerge from an assessment of the living out of a life of human dignity encompasses the terms 'goods' and 'human flourishing', but it should be noted that Sen and Nussbaum's philosophy does not necessarily coincide with a natural law approach which is the epistemology of this thesis.

We need a framework which identifies objective goods, and calls to action human agents towards the promotion of those goods which lead to a flourishing life, and necessarily then accord a person with dignity. As a basis for law's engagement with dignity, arguably the most influential theory of the past century on the promotion of human flourishing in the natural law theory school is arguably that of John Finnis, in his 1980 (and 2011 postscript)

⁴³³ See Martha Nussbaum, *Creating capabilities* (Harvard University Press 2011).

seminal work, *Natural Law and Natural Rights*.⁴³⁴ Finnis sets about the task of reformulating a theory of natural law as a beacon of objective moral legal evaluation of agency, action and flourishing in life. Finnis says of the theory of natural law:

A theory of natural law need not be undertaken primarily for the purpose of...providing a justified conceptual framework for descriptive social science. It may be undertaken, as this book is, primarily to assist the practical reflections of those concerned to act, whether as judges, or as statesmen, or as citizens.⁴³⁵

Finnis is concerned then with providing a normative framework for the law to observe; a call to action towards promotion of human flourishing which acts as a mandate for law making. To Finnis, these are reconstituted principles of natural law. This is an Aristotelian approach, and is in essence, Finnis's attempt to continue Aristotle's work in seeking to identify what amounts to a life worth living, a life of human flourishing; which is taken to be a life of dignity, considering the understanding of Sen and Nussbaum as above. How does Finnis attempt to achieve this task? He begins by exploring basic values that are present in shaping our practical reasoning.⁴³⁶ He contrasts with Hart's position of 'natural facts and aims' of human beings concerning the setting within which human beings seek various 'ends' or goals. Whilst Hart determined that only 'survival' existed as an indisputable end, Finnis indicates that there are a number of such values, or *self-evidently* objective 'goods'.⁴³⁷ The object of moral judgment, says Finnis, is to make decisions which amount to the preservation of and respect for objective goods that ultimately lead to 'human flourishing'.⁴³⁸

Objective Goods

The goods are important because achieving those goods is what amounts to human flourishing, and it is here asserted that the preservation, protection or promotion of human dignity is synonymous with human flourishing. This idea of human flourishing is akin to human dignity, since it is essentially about the promotion of and positive action towards a life

⁴³⁴ John Finnis, *Natural Law and Natural Rights* (OUP 1980)

⁴³⁵ Ibid 18

⁴³⁶ Finnis also speaks of the concept of 'self-evidence'; being a principle which '...cannot be demonstrated, but equally needs no demonstration...'; Ibid 59ff. This is an important principle as it relates to human dignity, since the theme of dignity as inherent in humans qua human may rest on the principle of self-evidence. It may not be feasibly demonstrated, but it needs no demonstration.

⁴³⁷ Finnis op cit 81ff

⁴³⁸ Ibid

which is full, successful and fulfilling. These goods are considered in turn with reference to the text.⁴³⁹

Firstly, all human societies 'show concern for human life; self-preservation is accepted as a proper motive for action'. All 'regard the procreation of a new human life as in itself a good thing'. He identifies that 'no human society fails to restrict sexual activity; in all societies there is some prohibition of incest, some opposition to boundless promiscuity and to rape, some favour for stability and permanence in sexual relations'. This is so even in societies that have relaxed sexual social norms, such as in the UK, where homosexual practice, civil partnership and gay marriage are now lawful. All human societies 'display a concern for truth'. This is exhibited in law through the provision of legislation prohibiting conduct which is 'dishonest', such as theft, and fraudulent acts. Further, such acts which involve a breach of trust by a person of authority for example, will receive higher penalties. In the courtroom, the protection and promotion of sound witness testimony is a stalwart provision of the criminal and civil justice systems of the UK and beyond. Finnis continues, that 'all know friendship, title or property, reciprocity, play'. Finally, 'all societies treat the bodies of dead members of the group in some traditional and ritual fashion (and funeral rites are observed even at war).⁴⁴⁰

Building upon these observations, Finnis observes from this list of values that there are seven basic tenets or forms of 'good' for human beings to flourish. The first is *Life*. This consists of a drive for self-preservation, and it follows, not simply as Hart suggested 'survival'; instead flourishing in life. This includes being healthy, and having an absence of pain, injury or disease in the body or mind. To seek this good is to perform or abstain from actions/behaviours which cause or risk causing harm to this good. It might be therefore that to perform a sky-dive negates this good, even momentarily where the risk to life and health is under threat. The next tenet, is *Knowledge*. Finnis devotes some time to the consideration that human beings, in order to flourish, need to pursue knowledge, and most would have the desire to do so. This includes the curious mind – wanting to seek answers to questions of life. After knowledge; *Play*. Procreation, including sex, sits within the good of life, but sexual intercourse may be play, friendship or an effort to procreate. Sex is not then limited only to procreation, but extends to what is conducted between consenting adults as 'fun'. This is considered by Finnis 'a large and irreducible element in human culture'⁴⁴¹. He posits, that '...Each one of us can see the point of engaging in performances which have no point

⁴³⁹ Finnis op cit 81ff

⁴⁴⁰ Ibid 83-84

⁴⁴¹ Ibid 87

beyond the performance itself, enjoyed for its own sake'.⁴⁴² Linked to play is the good of *Aesthetic Experience*. This could be considered the human ability to experience and recognize beauty. Perhaps human beings are unique in the animal kingdom for their ability to appreciate nature and its wonder, although also unique in the purposeful disregard for its wellbeing.

The next tenet is *Sociability (Friendship)*, which is given as '...A minimum of peace and harmony amongst men, ranging to full friendship'.⁴⁴³ Friendship of course can take many forms, but involves some self-less thinking and action towards another. Finnis places *Religion* in the scheme of basic goods in respect of the relationship between humanity and a sovereign God, calling it the '...relation of human initiative and the orders of humanity to the whole cosmos and to the origin/creation...' and '...human freedom from instinct and impulse to intelligent grasp of worthwhile forms of good, mastering one's own environment, own character, yet subordinate to a God, sovereign over all'.⁴⁴⁴ Notably, it is not suggested that belief in God is the necessary good in itself, but '...the importance of considering the questions of origin, faith and obligation to God, even if the person decides against a belief in a God'.⁴⁴⁵ The final good is practical reasonableness, which is discussed next.

Practical Reasonableness as a normative call to action

Practical Reasonableness (PR) stands alone among the other goods because its ultimate purpose is to be utilised for the achieving of all the other goods. It '...is participated in precisely by shaping one's participation in the other basic goods, by guiding one's commitments, one's selection of projects, and what one does in carrying them out'.⁴⁴⁶ Therefore, the purpose of PR is produce human flourishing or wellbeing. Practical reasonableness is described as 9 elements - a rational plan of life; no arbitrary preferences amongst values; no arbitrary preferences amongst persons; detachment from objectives – (in order to be sufficiently open to all the basic goods in all the changing circumstances of a lifetime...one must have a certain detachment from all the specific and limited projects which one undertakes towards achieving the basic goods); commitment to objectives – balanced against the 4th requirement is a certain fidelity towards the same objectives; to bring about

⁴⁴² Ibid

⁴⁴³ Ibid 88

⁴⁴⁴ Ibid

⁴⁴⁵ Ibid

⁴⁴⁶ Ibid 100ff

good – efficiency of methods (which is contrary to utilitarian/consequentialist thought); respect for every basic value in every act (not damaging any realization of a good); following the common good of one's communities and acting in accordance with one's own conscience (the 'gut feeling'). According to Finnis, the product of the nine requirements of PR is morality:

...some philosophers have located the essence of 'morality' in the reduction of harm, others in the increase of well-being, some in social harmony, some in universalizability of practical judgment, some in the all-round flourishing of the individual, others in the preservation of freedom and personal authenticity...not every one of the nine requirements has a direct role in every moral judgment, but some moral judgments do sum up the bearing of each and all of the nine on the questions in hand, and every moral judgment sums up the bearing of one or more of the requirements.⁴⁴⁷

Practical reasonableness is determined by Finnis to be a manner of action which leads towards the promotion of the objective goods, and necessarily leads one away from acts which would negatively impact upon the attaining of them. Finnis says that for a person to make a 'moral' decision/judgment, they will necessarily adopt one or more of the requirements, and on occasion, all of them. This practically reasoned judgement, leading to human flourishing vis-à-vis promotion of the objective goods is the normative call to action which we are in this chapter concerned with. This normative call to action is a requirement on all agents to conform with PR (by acting in a way which is practically reasonable because it conforms with an element/s of PR, and thus ultimately leads to promotion of the objective goods, and *a fortiori* human flourishing).

The objective goods lead to human flourishing. A course of action which offends some or all of those objective goods has a detrimental impact on human flourishing. Such a course of action fails to conform to PR as the call to action to promote human flourishing, and, by the linkages suggested above, human dignity. A course of action which involves a mode of dignity violation as presented earlier violates the dignity of the individual, and inevitably has a detrimental impact upon the flourishing of the individual. Therefore a course of action which involves a mode of dignity violation necessarily fails to conform to PR. A failure to conform with PR acts in contradiction to the normative principles Finnis lays out in his theory, and also breaches his defined principles of natural law. This normative framework, applied to IPA dignity suggests that a course of action which violates IPA dignity because it involves a mode of dignity violation, once demonstrated can be considered to be offending the normative principles of natural law set out by Finnis and here applied to IPA dignity.

⁴⁴⁷ Ibid 126

Summary and next chapter

This chapter has set out a normative framework for IPA dignity. This has resulted in the descriptive model of dignity constructed in this thesis being accorded normativity necessary for the ensuing analysis which seeks to answer the hypothesis question. Only with a normative framework can we properly engage with the Honeyball report, and comment on the violation or otherwise of dignity in prostitution, following a thorough review of the issue in the academic discipline of sociology. This leads us to the next chapter which reviews the literature of prostitution in order to provide a justification for the ensuing analysis. Without providing a considered reflection on the issue of prostitution, the study is open to potential criticism. The chapter will also identify and align the study with an 'explanatory model' of prostitution, in order to refine the materials used in this highly complex area of study, and place the analysis of narratives in their correct academic context.

PART FOUR

11. THE SOCIO-LEGAL ISSUE OF PROSTITUTION

This study seeks to address the hypothesis question ‘does prostitution violate human dignity’. The study is prompted by a recent report by Labour MEP, Mary Honeyball, which states that prostitution amounts to a violation of human dignity. Criticism has been levelled at the report because it fails to utilise an objective set of criteria to reach that conclusion, despite the report being weighty in its influence on legislators in the European Union and perhaps beyond. It coincides with calls for criminalisation of elements of the prostitution encounter – the sale/purchase of sex in a number of states, as well as in the UK, adhering to the so-called ‘Nordic’ model used in Sweden, Norway and Iceland, which criminalises the client of prostitution.

In order to engage with the debate and provide some objective criteria to approach the idea of dignity violation in prostitution, the thesis has reviewed the literature to identify core themes of human dignity. In order to provide some objective and measured sense of what is generally meant when the language of dignity is used, a model of dignity was constructed of three elements, to present dignity as inherent dignity, autonomy as dignity and personal inviolability as dignity. Dignity violation was considered in theory and in law before the model, IPA dignity was critiqued. It was recognised that in order to make a normative claim on the prostitution encounter as the Honeyball report does, using in this study the IPA dignity model, a normative framework needed to be applied to the model. The previous chapter addressed this need and utilised the natural law theory of John Finnis to present a call to action not to violate human dignity, vis-à-vis the IPA model.

This chapter introduces Part Four of the thesis. This chapter will review the literature in this field, and present the sociology of prostitution, and the explanatory models used to understand it in the sociological discipline. It will indicate that the Gender and Male Violence explanatory model (GMV) will be utilised to inform the ensuing study, and will draw from the GMV model the principal issue of the sale of sexual services, termed the ‘prostitution encounter’, as well as the issue of violence in prostitution. It will introduce the legal approaches to prostitution and consider that human rights and human dignity as modern approaches in law, may be more sufficient.

Introduction to the Academic Subject

The sociology of prostitution is a subject of high complexity, and as an academic discipline, whilst principally lying within sociology and criminology, is also correlated to other academic fields, including law, religion, gender studies and radical feminism.⁴⁴⁸ One academic way of approaching prostitution is through the sociology of prostitution, although the theoretical premise of this method is itself subject to some critical appraisal.⁴⁴⁹ The ensuing study considers specific legal and 'rights' issues within the sociology of prostitution. Prostitution will be regarded here not from a moralistic 'wrong' or 'right' approach, although such dialogues are considered and explicated later on.

The study will utilise a phenomenological analysis of the narratives of sex workers and the issues they face in the prostitution encounter. The hypothesised effect that the prostitution encounter has upon the sex worker and the client respectively is then considered by adopting an approach through the legal and philosophical theory of human dignity, to explore how prostitution might affect the dignity of sex workers through the IPA model of human dignity, as introduced in the methodology chapter, and constructed in later chapters. Equally, the issues faced by the client in the prostitution encounter are considered, with a specific focus on the issue of the purchase of intimacy.

Before any such analysis can take place, however, the thesis begins with the sociological element of the study. Although this is predominantly a legal study, the question of what prostitution is, beyond a simplistic lay understanding, has to be established. This chapter will provide an introduction to the core issues within the sociology of prostitution.

This chapter provides a sufficient understanding of how prostitution, and the selected issues within it are relevant for the ensuing study. It will *place* the study's principal adopted issue of the 'prostitution encounter' – the exchange of sexual services between sex worker and client, within the sociological context and explanatory models of prostitution. The key aim of this chapter is to provide fundamental insight into the subject area, advancing from the methodology chapter proficient in the main sociological, political and legal issues that arise in this controversial vocation.

⁴⁴⁸ I.e. Kate Millet, *The Prostitution Papers* (St. Albans: Paladin 1975); Kathleen Barry, *Female Sexual Slavery* (Englewood Cliffs, NJ 1979); Kathleen Barry, *The Prostitution of Sexuality* (New York: New York University Press 1996); Carole Pateman, 'Defending Prostitution: Charges Against Ericsson', (1983) 93 *Ethics* 561; Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press 1988), Catherine MacKinnon 'Prostitution and Civil Rights', (1993) 1 *Michigan Journal of Gender and Law* 13; Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Plume 1989)

⁴⁴⁹ I.e. Edward Armstrong, 'The Sociology of Prostitution', (1981) 1(1) *Sociological Spectrum* 91

Following this, there will be a review of the predominant literature in prostitution, and then the key 'explanatory models' through which prostitution is examined in the discipline of sociology. Of the explanatory models, the Gender and Male Violence model ('GMV') will be highlighted as most pertinent to the ensuing study. There will be a discussion on the different sex markets, plus the motivations for entry into, exit from, and retention within prostitution.

Reviewing the Prominent Literature

The author of this thesis is a lawyer by discipline. As such, the texts that follow were chosen to enable the author and the reader of this thesis to consider some of the complex issues in the sociology of prostitution, and be equipped to apply the issues presented to the IPA model of dignity, which will be constructed later.

General Sociology of Prostitution

As mentioned above, prostitution and the reasons for women's entry into prostitution have been examined in various ways over the decades, and many academics such as Jane Scoular, in law and gender studies, Carol Pateman and Andrea Dworkin in feminist studies of prostitution, and Belinda Brooks-Gordon, Teela Sanders and Maggie O'Neill, in the sociology/policy fields of prostitution study, have made key contributions to knowledge of the many issues and approaches to the study of prostitution. A number of prominent scholars were identified in the field of prostitution study, including Maggie O'Neill, Teela Sanders, Rosie Campbell, Jo Phoenix and Sarah Kingston. These authors are also noted for their contribution to the debate on rights in prostitution, whether that be surrounding rights to protection in the course of performing sex work, or recognition through trade and economic welfare consideration.

Research, theory and narratives in the sociology of prostitution appear, in part located in feminist theory,⁴⁵⁰ and this is particularly so when reading in the field of feminist theory per se, which considers pornography in particular as an issue of patriarchy and male dominance.⁴⁵¹ It is also apparent that the explanatory models which will be discussed tend to emphasise on the similarities and differences between sex workers and non-sex worker women, and each model ultimately reduces to this key focus-point. This is a point made by

⁴⁵⁰ I.e. Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998)

⁴⁵¹ I.e. Rosemary Tong, *Feminist Thought: A Comprehensive Introduction* (Hyman 1989) 111ff; Valerie Bryson, *Feminist Debates: Issues of theory and Political Practice* (Macmillan Press Ltd 1999) 184ff

Rosie Campbell, who has called this the 'othering' of sex workers.⁴⁵² The explanatory models which will be introduced, and are used in the sociology of prostitution, are those as observed by prostitution researchers, including, inter alia Teela Sanders, Joanna Phoenix and Maggie O'Neill.

The sociology of prostitution can be considered through qualitative empirical study. An example of such a (commonly adopted) approach, is that of Jo Phoenix. Phoenix conducted an empirical study in the late 1990s, which involved interviewing sex workers of varying ages from an anonymised city of 'Midcity' - a large city in England of around one million inhabitants, with a variety of ethnic groups. She conducted interviews with 21 female sex workers aged between 18 and 44, and access to them was established via two 'gatekeepers' – one from a local sexual health outreach service and the other who worked in a probation-linked day centre. In the interviews, questions asked ranged in diversity of themes, and topics included general involvement in prostitution, encounters with the police, and objectification of sexual relationships. The interviewees' working routines were also observed. Some sex workers were street based and others worked in saunas and brothels.

Such a study is typical of the empirical interview-based method, which appears to be dominant in the sociological study of prostitution. Whilst the study by Phoenix is not intended to be exhaustive or reflective of the entirety of street and indoor prostitution in the United Kingdom, it provides a snapshot which the reader would find useful for the purposes of this study; enabling the reader to understand the realities of the issues only theorised elsewhere. The respective text provided an overview of prostitution, sufficient for this study, but also including appropriate depth within the subject. No comment is made as to the ethnic diversity of the sex workers involved in the study conducted by Phoenix, and perhaps this illustrates a shortcoming in this work, if only minor.

Phoenix's UK study might be contrasted with another piece of empirical research, conducted more recently in Lithuania by Dalia Puidokiene, which explores the dysfunctional nature of the lives and backgrounds of a small group of sex workers.⁴⁵³ It enables the reader to grapple with the complexities of the sex workers themselves, and to appreciate that for some of the sample tested, prostitution was never a wholly freely-made choice. It highlights the assertion that there existed a factor or combination of factors which led the women interviewed into prostitution, including suffering sexual violence as children. There are

⁴⁵² Rosie Campbell, 'Treating crimes against sex workers as hate crime: a tool in the recognition of the rights of sex workers to public protection and justice?' Paper presented at Sex Work and Human Rights Conference, University of Durham Law School, 18 September 2014

⁴⁵³ Dalia Puidokiene, *'Covert Codes of Women in Prostitution: Pathways for Recovering Roots after Trauma Interface'* University of Lapland 2012

obvious dangers of placing too great a reliance on such studies, and a temptation to make sweeping statements about all sex workers, based on these findings. This study is also an academic dissertation, and so appropriate weight should be given thereto, given the absence of peer review.

What these two studies show for the purposes of this review, however, is a variety of approaches, and focus points. Phoenix's study examines the 'present' situation for sex workers – how is prostitution affecting them now, what do they experience on a day-to-day basis, whilst the Lithuanian study has more of an emphasis on the 'why' and the historical factors leading to the present prostitution. One also has to observe problems associated with the conflation of prostitution and trafficking, which seems apparent in the latter study; a problem which will be discussed further on.

Some studies are focused on the general issues underpinning and overarching prostitution. Sanders, O'Neill and Pitcher present a resource with a focus on the sociology of sex work, that takes a particular look at feminist arguments for and against sex work, moving into economic issues and policy, and then into the lives of the sex workers themselves, with figures provided for those entering, leaving and remaining within the sex industry.⁴⁵⁴ The text then explores trafficking and policy in the UK, (although this is a fast moving area of international law and policy which has altered in recent years); and also explores the role of the client in the sex industry. Such a text therefore provides a good overview of the key issues relating to prostitution, sex workers' and clients' lives and lifestyles, and trafficking for sexual exploitation, providing crucial foundational and extended knowledge in prostitution. Authors such as Jane Scoular, Maggie O'Neill and Phil Hubbard have focused attention upon the relationship between law and prostitution, and the regulation of prostitution.⁴⁵⁵

Some resources aim at providing a collection of chapters that identify specific issues, relevant at the time of writing. *'Rethinking Prostitution: Purchasing Sex in the 1990s'*⁴⁵⁶ is a UK work which provides a collection of articles and research from prominent prostitution experts. Susan Edwards provides an interesting chapter which frames prostitution as a human rights issue, by considering the interaction between prostitution and the law from soliciting offences and kerb crawling to rent law, inequality and self-determination. This work

⁴⁵⁴ Teela Sanders, Maggie O'Neill, Jane Pitcher, *Prostitution: Sex work, policy & politics* (Sage 2009)

⁴⁵⁵ I.e. Jane Scoular, 'What's Law Got to Do With it? How and Why Law Matters in the Regulation of Sex Work' (2010) 37(1) *Journal of Law and Society* 12-39; Jane Scoular, Maggie O'Neill, 'Regulating Prostitution: Social Inclusion, Responsibilization, and the Politics of Prostitution Reform' (2007) 47 *British Journal of Criminology* 764-778

⁴⁵⁶ Graham Scambler, Annette Scambler (Eds), *Rethinking Prostitution: Purchasing Sex in the 1990s* (Routledge 1997)

is separated by some twenty years from a recent edited text, in which Kingston and Sanders adopt a broad overview of the sociology of prostitution, to incorporate new disciplines and focus on themes such as policy (past and present), methodologies used in sex work research, mobility and consumption and emerging trends in prostitution and culture.⁴⁵⁷ This modern resource provides much sociological theory on prostitution, defined there as sex work. Some of the obvious changes in that time surround new technologies used in prostitution. Webcam work (explained later) is very prominent now, but wasn't even in existence in the early 1990s.

To summarise, the preceding literature, and others not specifically referred to in this review examined and explicated a general sociological overview of prostitution and associated issues. In the next section of literature reviewed, authors demonstrate alignment to polarised positions on prostitution.

Abolitionist Debate

Some authors, such as Melissa Farley, hold the position that prostitution *is* violence against women, and is an ardent campaigner to that end. Farley's expertise in clinical psychology has provided the backdrop for much of her research into the effects of prostitution upon the mental health of sex workers. In an international work from 1998, Farley et al studied post-traumatic stress disorder in 475 sex workers in five different countries; Thailand, South Africa, USA, Turkey and Zambia.⁴⁵⁸ As such, the research was conducted across not only 'developing' countries but also in the West. Violent backgrounds are identified in high proportions of those interviewed, along with instances of homelessness and drug and alcohol dependency.

Farley's research clashes at times with other scholars such as Ronald Weitzer, whose general stance is that the conflation of trafficking and prostitution has led to implausible and dangerous assumptions. In a 2005 article,⁴⁵⁹ she responds to challenges by Weitzer of the methodologies used in her research into the harms of prostitution.⁴⁶⁰ For Weitzer, she claims, indoor prostitution is favoured over street prostitution because of the benefits to the

⁴⁵⁷ Sarah Kingston, Kate Hardy, Teela Sanders, *New Sociologies of Sex Work* (Ashgate 2012)

⁴⁵⁸ Melissa Farley, Isin Baral, Merab Kiremire, Ufuk Sezgin, 'Prostitution in Five Countries: violence and post-traumatic stress disorder' (1998) 8 *Feminism and Psychology* 405

⁴⁵⁹ Melissa Farley 'Prostitution Harms Women Even if Indoors: Reply to Weitzer' (2005) 11 *Violence Against Women* 950

⁴⁶⁰ Ronald Weitzer, 'Flawed Theory and Method in Studies of Prostitution' (2005) 11(7) *Violence Against Women* 934

local community in removing prostitution from the streets.⁴⁶¹ Farley's position remains that prostitution is harmful in invisible ways – extending not only to physical violence but to long term emotional harm including, in the extreme, post-traumatic stress disorder, evidenced in some of those interviewed.

Farley has been criticised in recent years for her epistemological stance against prostitution and sex workers' 'rights'. John Lowman is a particularly outspoken critic of Farley's position, following their work as expert witnesses on opposing sides of *Bedford v Canada*,⁴⁶² in which Farley gave evidence on behalf of the state as Respondent, whilst Lowman gave evidence on behalf of the Applicant sex workers, seeking decriminalization of prostitution in Canada. Lowman's apparent tenet is that sex workers should be protected from harm which is perpetuated through criminalization of prostitution, and stigmatization.⁴⁶³ The polarisation of views on prostitution is visible in the literature between such key researchers as these, and is evidenced throughout the discourse on prostitution.

Janice Raymond's research addresses sexual exploitation and tends to conflate prostitution with sex trafficking. In accordance with Farley, she asserts that prostitution *is* violence against women and, in accordance with a radical feminist stance on male patriarchy in sexual domination over women, 'exists because significant numbers of men are given social, moral and legal permission to buy women on demand'.⁴⁶⁴ Her work has focused mainly on sex trafficking, and the UN's trafficking protocol, which was introduced in 2000, as part of her role in the Coalition Against Trafficking in Women (CATW).⁴⁶⁵

Catherine MacKinnon, who is an ardent advocate of women's rights is noted as a particularly strong voice against prostitution. In her article 'Prostitution and Civil Rights', she explains that 'Women are prostituted precisely in order to be degraded and subjected to cruel and brutal treatment without human limits...In rape, the security of women's person is stolen; in prostitution, it is stolen and sold.'⁴⁶⁶ MacKinnon also writes on trafficking and prostitution,

⁴⁶¹ Ibid 952

⁴⁶² *Bedford v Canada* (Attorney General) [2010] ONSC 4264 (Ontario Superior Court of Justice)

⁴⁶³ I.e. John Lowman, 'Violence and the Outlaw Status of (Street) Prostitution in Canada' (2000) 6(9) *Violence Against Women* 987

⁴⁶⁴ Janice Raymond, 'Sex trafficking is not "sex work"' (2005) 26(1) *Conscience* 45

⁴⁶⁵ Janice Raymond, 'The New UN Trafficking Protocol' (2002) 25(5) *Women's Studies International Forum* 491; J Raymond, D Hughes, C Gomez, 'Sex trafficking of women in the United States' (2001)

⁴⁶⁶ Catherine MacKinnon 'Prostitution and Civil Rights', (1993) 1 *Michigan Journal of Gender and Law* 13

and has authored an article exploring sexual violence in the wake of the Rwandan genocide⁴⁶⁷.

Dorchen Leidholdt provides an article contending with the 'pro-prostitution lobby' that prostitution violates human rights, and is not, as the latter group might advocate, an opportunity for women to exercise numerous rights. Making reference to a key text,⁴⁶⁸ in this article she argues that prostitution is not about a relationship of equal footing, but of imbalance.⁴⁶⁹ It is, in her words 'a paradigm of sexual and racial inequality', and amounts to objectification and dehumanization.⁴⁷⁰

Weitzer, as mentioned, is an advocate for indoor but not street prostitution. In a more recent article he has been critical not only of Melissa Farley, but of the general prohibitionist viewpoint. He says that 'Prohibitionist writers adopt what I call the oppression paradigm, which depicts prostitution as the epitome of male domination and exploitation regardless of historical period, societal context, or type of prostitution'.⁴⁷¹ He evidences his criticism in presenting the strong language used by prohibitionist writers such as Andrea Dworkin, Melissa Farley and Janice Raymond et al. Examples given include; 'When men use women in prostitution, they are expressing a pure hatred for the female body'; and 'prostitution is rape that's paid for.'⁴⁷² Weitzer is outspoken on what he calls 'sensationalism' and the defining of prostitution in a 'one-dimensional manner'⁴⁷³, the latter term echoed in other esteemed researchers' works which indicate the dangers of such broad-brush thinking.⁴⁷⁴

Other literature which features in the polarised debate about the rights and wrongs of prostitution, are works which concentrate on the legality of prostitution, and policy changes to criminalise, legalize or decriminalise it.

⁴⁶⁷ Catherine MacKinnon, 'The ICTR's Legacy on Sexual Violence' (2007) 14 New Eng. J. Int'l & Comp. L. (2007) 211

⁴⁶⁸ Cecile Høigård, Liv Finstad, *Backstreets: Prostitution, Money and Love* (Cambridge: Polity 1992)

⁴⁶⁹ Dorchen Leidholdt, 'Prostitution: A Violation of Women's Human Rights' (1993-4) 1 Cardozo Women's Law Journal 133

⁴⁷⁰ Ibid 135

⁴⁷¹ Ronald Weitzer, 'Sociology of sex work' (2009) 35 Annual Review of Sociology 213

⁴⁷² Andrea Dworkin, *Life and death: Unapologetic writings on the continuing war against women* (1997 New York: free Press) 145; Janice Raymond, 'Prostitution is rape that's paid for' (1995) Los Angeles Times, December 11, B6; quoted respectively in Ronald Weitzer 'The Mythology of Prostitution: Advocacy Research and Public Policy' (2010) 7 Sex Res Soc Policy 15, 17

⁴⁷³ Weitzer Ibid 16ff

⁴⁷⁴ Teela Sanders, 'Blinded by morality? Prostitution policy in the UK' (2005) 29 Capital and Class 9, 11

Attention in some articles is paid towards the Swedish criminalisation of clients and pimps, and the resulting effect the law has had on trafficking and prostitution generally. Max Waltman and Gunila Ekberg are two such example scholars. Waltman identifies that whilst the law has had a positive impact upon the demand for prostitution, resulting in fewer persons being trafficked into Sweden, the law has failed sex workers in aiding their exit from prostitution.⁴⁷⁵ Ekberg holds a very supportive position towards the Swedish law criminalising prostitution, commenting that Sweden's stance against prostitution should be emulated across the world to restrict the global sex trade. Her stance is undoubtedly aligned to that of Farley et al, as above.⁴⁷⁶

The next section of literature outlines the sources of sex worker and client narratives in the thesis. As outlined in the methodology chapter, this literature represents a cross-section of current empirical data taken from sex workers and clients, mainly through interviewing. This material provides narrative data regarding the prostitution encounter, and the violence reported in prostitution. As stated clearly in the methodology chapter, important consideration is given to the era in which the book was authored, where it was written, and known bias – specifically any feminist pro sex work or sex work as violence against women viewpoints, and finally a brief synopsis.

Sex Worker Narratives

Other material which is available provides accounts from sex workers, and a specific text in this category will be a source for the narrative element of the thesis.⁴⁷⁷ The resources now reviewed provide more of an in depth phenomenological presentation of the lives of the sex worker, to reveal sharp nuances between different narratives given.

*'Red Light, Blue Light'*⁴⁷⁸ was authored in the 1990s in the UK. It details an empirical study carried out in the UK in 1993, interviewing 100 sex workers, their clients and also the police; making it a fairly unique study in that respect. It has been included in order to consider narratives from not only sex workers, but from clients and the police, which can help to build a broader and perhaps more balanced picture of the realities of street sex work. This text

⁴⁷⁵ Max Waltman, 'Sweden's prohibition of purchase of sex: The law's reasons, impact and potential' (2011) 34 Women's Studies International Forum 449

⁴⁷⁶ Gunila Ekberg, 'The Swedish Law That Prohibits the Purchase of Sexual Services' (2004) 10(10) Violence Against Women 1187

⁴⁷⁷ Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998)

⁴⁷⁸ Karen Sharpe, *Red Light, Blue Light: Prostitutes, punters and the police* (Ashgate 1998)

shares similarities with others, such as *'Sex Work on the Streets'*⁴⁷⁹ - also produced in the 1990s, this time in Glasgow, Scotland. This was an empirical study of street sex workers by a team adopting a service-provider role and obtaining interviews on the streets of a red light district. Discussions of issues such as negotiation, and the skills of bargaining with clients are also included.

Such an analysis is beneficial to gain insight into the prostitution encounter, and the interrelation between sex worker and client. In this text as well as others utilizing empirical study, the narratives encourage the reader to ignore previously held generalisations about sex workers as victims, and explore the perception posed that some sex workers are clearly very skilled professionals who enjoy their work in prostitution.⁴⁸⁰ That theme is picked up in a seminal narrative-focused text *'Sex Work: Writings by Women in the Sex Industry'*,⁴⁸¹ from the USA. It comprises a collection of narratives taken from interviews conducted between the 1970s-90s, which chronicle the lives and experiences of [then] current and former sex workers, exotic dancers and pornographic actresses. A range of different types of sex work are included, from street prostitution, dancing, through to 'home' sex work. This text provided a great deal of understanding of the lives of those in the sex industry and the multi-faceted dynamics involved, which are apparent from the varied tones of the narratives of the sex workers who took part in this particular study.

This text provides raw and unfettered narratives of real life as a sex worker. The visceral nature of the experiences, some positive and others not, is particularly relevant when considering a phenomenological approach to the study of the sociology of prostitution, and the experiences of those at the heart of prostitution.

Client Research

Alongside inter alia, Sarah Kingston, and Teela Sanders, Mario Monto is a prominent researcher in male clients of prostitution.⁴⁸² Sanders has written comprehensively on the

⁴⁷⁹ Neil McKeganey, Marina Barnard, *Sex work on the streets* (Open University Press 1996)

⁴⁸⁰ See for example, Ibid 34

⁴⁸¹ Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998)

⁴⁸² I.e. Martin Monto, 'Holding men accountable for prostitution: The unique approach of the sexual exploitation education project' (1998) 4 *Violence Against Women* 505; Martin Monto, 'Focusing on the clients of street prostitutes: A creative approach to reducing violence against women (Final Report) (1999) Washington, DC: National Institute of Justice; Martin Monto, 'Female prostitution, customers and violence' (2004) 10 *Violence Against Women* 160; Martin Monto, Steve Garcia, 'Recidivism among the customers of female street prostitutes: Do intervention programs help?' (2001) 3 *Western Criminology Review* 1 <http://wcr.sonoma.edu/v3n2/monto.html> accessed 18th March 2014 accessed 18th March 2014; Martin Monto, Norma Hotaling, 'Rape myth acceptance

issues faced by clients of prostitution. *Paying for Pleasure*⁴⁸³ is a unique text which concentrates on the client of prostitution instead of the sex worker. Sanders recruited 50 clients through a variety of means, with a focus on the 'sexual stories' of the clients interviewed. Overarching questions asked of the subjects included the nature of sexual industry, stigma and secrecy, emotions, sexual scripts and social conduct and also on law and policy. Socio-demographic features are catalogued, and marital status, for example being one factor, was noted in each. Equally important was the type of market from which each client purchased sex. This demonstrated that the majority bought sex from both massage parlour and escort services, whilst very few bought sex from street workers.⁴⁸⁴ Motivations and 'push factors' were recorded, to frame the reasons for which the men interviewed sought mercenary sexual services. Equally the various 'pull factors' – those keeping men hooked into prostitution are recorded. The study provides a very comprehensive structural analysis of the sample of clients interviewed.

Literature: a summary

The literature on the subject of prostitution is vast, extending across decades, and through a variety of disciplines, in addition to the sociological material reviewed here. The texts selected represent recent (1970s to date) quantitative research that highlights the key issues in the GMV explanatory model, as will be explored next. The history of prostitution, and also how it is considered in other cultures, is not reviewed in this study, bearing in mind the relative comparability of the prostitution encounter in general. Any research conducted on sex workers has to acknowledge that there is extraordinary variability between experiences sex workers face,⁴⁸⁵ not least because of the global scale of the subject matter. Other factors, such as globalisation, capitalism, issues of gender and caste all play a part in the international existence of prostitution, and to attempt to fully comprehend it in one piece of work would be almost impossible. We now return to Phoenix's study⁴⁸⁶, and to the

among the male clients of female street prostitutes (2001) 7 *Violence Against Women* 275; M Monto, D Julka, 'Conceiving of sex as a commodity: A study of arrested customers of female street prostitutes (2009) 10 *Western Criminology Review* 1; Martin Monto, Nick McRee, 'A comparison of the male customers of female street prostitutes with national samples of men' (2005) 49 *International Journal of Offender Therapy & Comparative Criminology* 505

⁴⁸³ Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008)

⁴⁸⁴ See Ibid 36

⁴⁸⁵ Monto (2004) op cit 165

⁴⁸⁶ Joanna Phoenix, *Making Sense of Prostitution* (Palgrave 1999)

explanatory models of prostitution which inform this work; models which will now be explicated to enable a sufficient understanding of the complexity of the study of prostitution.

Explanatory Models

The following analyses are informed largely from Phoenix's insightful (1999) text, which contains an excellent chapter on the sociological discourse relating to prostitution and sex workers. As Jo Phoenix identifies in her work, there are a number of methods used to study prostitution, including ethnographic, pathological, and functionalist approaches.

Each looks at prostitution in a different way; for instance to view prostitution via a functionalist approach would be to determine that prostitution is necessary in a democratic society – that it serves a useful function,⁴⁸⁷ yet to approach it through a gender and male violence approach would be to adopt a more feministic epistemology, and focus chiefly upon the sale of sexual services.

Since this is not a critical review of the sociological study of prostitution per se, the following analysis is not intended to be exhaustive, but more of an introduction to the sociological methods in the study of prostitution. The principal aim of the review of these models is to identify what each model stands for and what its approach is. This will provide justification for the adoption of one particular model, the Gender and Male Violence model, as specifically informative in the ensuing study.

The reader will here be able to identify that there is a theme running through all the explanatory models; that being the question of whether sex workers are the same or different to non-sex workers.⁴⁸⁸ It is a question which goes to the heart of the personality of the sex worker, and seeks to draw distinctions between those who sell sex and those who do not. In considering human dignity later, it will be asserted that the concept has universal applicability - the intrinsic nature of human dignity entitles all, sex worker, non-sex worker or client, to the same level of respect and appreciation. In this way, this study will contrast with these explanatory models.

⁴⁸⁷ Teela Sanders, Maggie O'Neill, Jane Pitcher, *Prostitution: Sex work, policy & politics* (Sage 2009) 3

⁴⁸⁸ Phoenix op cit 35ff

Functionalist explanatory model (FN)

Functionalism is itself a vast area of study within the sociological and philosophical disciplines.⁴⁸⁹ It has been linked to prostitution, and the two studied in line with each other.

If prostitution is considered a 'necessary evil', it is considered under a functionalist approach, originally propounded by Kingsley Davis (prominent in functionalist theory), in 1937, in his seminal appraisal of the sociology of prostitution.⁴⁹⁰ His approach, which makes reference to anthropological studies,⁴⁹¹ is that certain organisations and structures have a level of necessity about them. In such a method, it is considered that prostitution serves a useful function. For example, sex workers provide sexual relief for married (and unmarried) sexually frustrated men.

In his examination, Davis discusses the reasons for prostitution's existence, at times delving into anthropology, and reviewing the function of prostitution in his view as actually 'preserving marriage'.⁴⁹² He considers prostitution 'malleable, providing for variety, perverse gratification, and intercourse free from entangling cares and civilised pretence'.⁴⁹³ Davis certainly appears to look upon prostitution favourably, demonstrating the essence of the functionalistic 'needs-must' view point.⁴⁹⁴ In an article from 1968 which examined female 'deviance', the functionalist approach was said to stress 'the impact of social structural features on individuals and groups and also the structuring of situations which lead to opportunities for deviance'.⁴⁹⁵

The problem with a functionalist model in the scope of this study is that it appears to disregard the inherent harms of deleterious issues of prostitution in favour of its overarching validity in society, regardless of moral views or public policy opinion. It does not consider the issues facing the sex worker, but instead hinges upon the client – i.e. it is the client's needs which are met through the provision of prostitution, as per Davis, above. Studies which

⁴⁸⁹ See George Huaco, 'Ideology and General Theory: The Case of Sociological Functionalism' (1986) 28(1) *Comparative Studies in Society and History* 34-54 for a considerable examination of this area of sociological study beyond the scope of this study, see the work of Block, in Ned Block, *Functionalism* (1980); Ned Block, 'Troubles with functionalism' (1980) 1 *Readings in philosophy of psychology* 268

⁴⁹⁰ Kingsley Davis, 'The sociology of prostitution', (1937) 2(5) *American Journal of Sociology* 744

⁴⁹¹ E.g. Solly Zuckerman, *The Social Life of Monkeys and Apes* (N Y, Harcourt, Brace, 1932)

⁴⁹² See Kingsley Davis, 'Prostitution' in Robert Merton, Robert Nisbet (eds), *Contemporary Social Problems* (New York 1961)

⁴⁹³ Ibid 753

⁴⁹⁴ See also Armstrong op cit

⁴⁹⁵ Frances Heidensohn, 'The Deviance of Women: A Critique and an Enquiry' (1968) 19(2) *British Journal of Sociology* 160, 166

wholly examine the *client's* welfare, needs and also those exploring criminalisation or abolition of prostitution may well utilise a functionalistic approach. Adopting a functionalist approach does not fit well with the epistemological approach of this study, since its focus centres almost exclusively upon the needs of the client, and would not therefore provide adequate consideration of the welfare of the sex worker.

Pathological and Ethnographical Explanatory Models (P&E)

One particularly historical model of study is a pathological approach to prostitution. Studies by Lombroso and Ferrero in 1895, focused on the criminality of the female mind, associating female prostitution with the criminal mind of the male.⁴⁹⁶ The main thrust of the work posited that females who worked as sex workers were apparently degenerate in their psychological make-up, and lacked 'normal' mental development. Owing to some of the language used, the article is plainly out-of-date, and modern studies would certainly cast considerable doubt on such findings - for example:

...the mental and physical peculiarities which are said to be characteristic of the criminal are in reality common to him with the lunatic, the epileptic, the alcoholic, the prostitute, the habitual pauper. The criminal is only one branch of a decadent stem; he is only one member of a family group; his abnormalities are not peculiar to himself; they have a common origin, and he shares them in common with the degenerate type of which he furnishes an example...⁴⁹⁷

A later pathological study examined not only the inherent psychological development of the female sex worker, but usefully went further to examine the economic backgrounds of subjects.⁴⁹⁸ Such a study seems more realistic given that it is acknowledged that economic factors are perhaps very often a fundamental cause of entry into, and retention within prostitution.⁴⁹⁹ Glueck et al state; 'It is clearly the profit-making motive that is involved in its [prostitution's] promotion'.⁵⁰⁰ The literature suggests it does not necessarily appear to always be the case that profit-making *initially* drives most women into prostitution, but instead

⁴⁹⁶ Cesare Lombroso, Guglielmo Ferrero, *The Female Offender: The Normal Woman and the Prostitute* (London: Fisher Unwin 1895)

⁴⁹⁷ *ibid* 17

⁴⁹⁸ Eleanor Glueck, Sheldon Glueck, *Five Hundred Delinquent Women* (New York: Knopf 1934)

⁴⁹⁹ E.g. M O'Neill, *Prostitution and Feminism* (Cambridge: Polity 2001) at 83

⁵⁰⁰ Glueck and Glueck *op cit* 309

poverty and drug abuse, homelessness etc.⁵⁰¹ As can be seen in the material that follows, these are often also the factors responsible for the retention of women in sex work.

Sex workers were categorised in a later study into 'voluntary' and 'compulsive' prostitutes.⁵⁰² The former category were those who chose to sell sex freely, as a means of making money – a decision entered into with rational forethought, whilst the latter were forced into prostitution by their own psychological disposition. There is a focus in that work on those entering prostitution falling into the second category, having suffered trauma in early childhood.

Some modern research has indicated that many women enter prostitution following abusive experiences in both child/adulthood.⁵⁰³ As per the literature review above, Farley et al have pointed specifically towards childhood trauma as a factor for entry into prostitution.⁵⁰⁴ This is indeed a specific area of study which requires more attention, to ask the questions across many demographics, as to how and why women enter the sex trade, and as to whether specifically any such past abusive experiences genuinely drive the migration.

Ethnographical study in general is a very essential form of sociological research, in which the researcher observes the study subject in their day to day lives, making note of what [the researcher] sees and hears. It is very successfully utilised to research prostitution.⁵⁰⁵ The reader is directed to a useful resource for more information on ethnographical study, which is

⁵⁰¹ I.e. Sanders et al op cit 7

⁵⁰² Harry Benjamin, Robert Masters, *Prostitution and Morality: A Definitive Report on the Prostitute in Contemporary Society and an Analysis of the Causes and Effects of the Suppression of Prostitution* (London: Souvenir Press 1964)

⁵⁰³ See Rachel Harding, Paul Hamilton, 'Working girls: abuse and choice in street-level sex work? A study of homeless women in Nottingham', (2008) *British Journal of Social Work* at <http://bjsw.oxfordjournals.org/cgi/content/abstract/bcm157> accessed 8th October 2013; see also Puidokiene (n 465)

⁵⁰⁴ Melissa Farley, Isin Baral, Merab Kiremire, Ufuk Sezgin, 'Prostitution in Five Countries: violence and post-traumatic stress disorder' (1998) 8 *Feminism and Psychology* 405

⁵⁰⁵ For example, Nick Mai is an ethnographic and sociological researcher who uses multiple mediums to teach on sex work, migration and sociology and whose work can be explored further by a reader interested in this area of research. Mai refers to the concept of sexual humanitarianism as a form of gentrification in his work on sex work and migration.⁵⁰⁵ For Mai, the idea that sex workers need to be protected by the state as 'vulnerable' persons, results in a form of oppression in and of itself; N Mai, 'Understanding the Impact of Sexual Humanitarianism on Migrant and Non-migrant Sex Workers in France and the UK, food for thought for post-Bedford Canada?' Paper presented at Sex Work and Human Rights Conference, University of Durham Law School, 19 September 2014.

not discussed further here.⁵⁰⁶ For the purpose of this study, an ethnographic or pathological model is not adopted.⁵⁰⁷

Social Dislocation and Criminal Subculture Explanatory Model (SDC)

This model describes women's involvement in prostitution having regard to their position in society and 'questions are asked about the extent to which women are segregated, or cut off, from legitimate or acceptable social relationships and institutions'.⁵⁰⁸ Under this explanatory model, it is the woman's position in society and how it has impacted upon her which is key to understanding how she has entered into prostitution, and perhaps what keeps her there. Phoenix refers to an important study by Wilkinson in the early 1950s which explored the lives of sex workers.⁵⁰⁹

This model is situated less along the lines of pure feminist theory, in that the model does not propound the general female subordination epistemology existent in core feminist work. Instead, this model concentrates on what has happened to the woman in early life to cause her to enter into prostitution. As such, it is very much concerned with facts and experiences, and there is clear crossover with the pathological model in asking the question, 'why has this person entered into prostitution'. Puidokiene's study would appear to adopt such a focus.⁵¹⁰ That study paints a picture of fractured early home life, broken homes and sexual abuse being attributed to entry into prostitution, similarly to other studies in this model.⁵¹¹ Various contributors to such social dislocation as the supposed cause(s) of entry into prostitution are considered:

...Long-lasting, traumatic experiences in childhood, during the especially sensitive periods of personality development, chop at the roots of personality formation and greatly interfere in its development. In such a case, a person cannot be understood by character, dysfunction type or one or another structure from the perspective of proprium

⁵⁰⁶ I.e. Martyn Hammersley, Paul Atkinson *Ethnography: Principles in practice* (Routledge, 2007) 1-26

⁵⁰⁷ This is a potential area of future research which might successfully encompass the IPA model of dignity to consider pathological and ethnographic studies of prostitution. The conclusion chapter of the thesis outlines future research, and gives suggestions thereto.

⁵⁰⁸ Phoenix op cit 43

⁵⁰⁹ R Wilkinson, *Women of the Streets: A Sociological Study of the Common Prostitute* (London: British Social and Biology Council 1955)

⁵¹⁰ Puidokiene op cit

⁵¹¹ Ibid. See also Finkelhor and associates, 1986; Gailene, 2008; Herman, 1997; Karmaza, 2007; Moustakas, 1961; Solomon, Siegel, 2003

[sic] (or individuality) but only by associating the person's life story with specific ways of being in that person's world.⁵¹²

Naturally, a criminological study would also overlap here, and the study of deviance, criminal thought, and, more specific to this work, the study of women and crime could be addressed.⁵¹³ For example, in a key text in this area from 1979, Freda Adler and Rita James Simon explore the historical perspective of the 'female offender', making reference to the key articles from Lombroso and Ferrero, and Glueck et al. and providing insight into the criminality of women involved in prostitution.⁵¹⁴

Economic Position and Poverty Explanatory Model (EPP)

The title of the model is self-explanatory, and really coincides with the social dislocation model to some extent. The principal focus of this model, is the economic status of those entering prostitution and keeping them there. Kingsley Davis, who was as mentioned a prominent advocate of the functionalist model also considers the economic factors. He holds that prostitution 'embraces an economic relation, and is naturally connected with the entire system of economic forces',⁵¹⁵ however, 'the existence of prostitution seems related both to the physiological nature of man and to the inherent character of society, both of which include more than the sheer economic element'.⁵¹⁶

What is also clear from studying human trafficking is the effect the myriad of causes, including globalisation, has had on prostitution. In an article taken from Adler and Simon's text, Kate Millett opens by declaring, 'I don't think you can ever eliminate the economic factor motivating women to prostitution. Even a call girl would never make as much in a straight job as she could at prostitution.'⁵¹⁷

She tells of the choice some women have between starvation and earning good money as a sex worker, making comparisons to the so-called 'legitimate' business decision making. This model concerns various economic concerns which go beyond the scope of this study. However, future research with human dignity might consider the effect that economic factors

⁵¹² Puidokiene op cit 131

⁵¹³ I.e. M Chesney-Lind, "'Women and Crime": The Female Offender' (1986) Signs 78

⁵¹⁴ Freda Adler, Rita Simon, (eds), *The Criminology of Deviant Women* (Houghton Mifflin 1979)

⁵¹⁵ Davis op cit 749

⁵¹⁶ Ibid

⁵¹⁷ From Millett op cit 55-58, extract taken from Adler and Simon op cit 211

have upon the dignity of the sex worker, in respect perhaps of economic coercion into prostitution, for example.

Gender and Male Violence Explanatory Model ('GMV')

This approach to understanding prostitution has been called the 'sexual-domination' approach, which 'contests the claims of choice, consent and voluntariness'.⁵¹⁸ The GMV model finds itself embedded in radical feminist theory, particularly in the polarised debate between prostitution being violence against women on the one hand, and being liberating to those who sell sex as 'sex work' on the other.

Phoenix says of the GMV model that it 'explains prostitution as a manifestation and result of men's control over women's sexuality'.⁵¹⁹ As Phoenix explains, it is this model which looks more into the detail of the *sale of sex* than the other models⁵²⁰. This is pivotal in its use in this study, which centres on the prostitution encounter, as explained. The GMV consists in part of a complex study of the reasons for sex workers entering into the vocation, and the reasons they remain there; exploring the background of sex workers and the patterns familiar between them.

Høigård and Finstad's 1992 work is particularly influential in numerous articles where the issue of violence in prostitution⁵²¹ is, by Phoenix's estimation, 'a good example of the gender and male violence...model'.⁵²² Their work appears to align with the work of a number of feminist organisations including the Coalition Against Trafficking in Women (CATW), who observe a strong anti-prostitution or abolitionist position. This viewpoint considers sex workers invariably as victims, being dominated by men, and using their sexuality as a means to make money in that culture of subservience to the opposite sex. Comparisons can be drawn between these strong viewpoints on prostitution and the sex trade in general and the concepts of objectification⁵²³ and male dominance/female subservience in feminist theory.⁵²⁴

⁵¹⁸ See B Havelková, 'Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes' (2011) 18 Cardozo Journal of Law and Gender 55, 66

⁵¹⁹ Phoenix op cit 61

⁵²⁰ Ibid 61ff

⁵²¹ Cecile Høigård, Liv Finstad, *Backstreets: Prostitution, Money and Love* (Cambridge: Polity 1992)

⁵²² Phoenix op cit 61

⁵²³ Martha Nussbaum, *Sex and Social Justice* (OUP 1999)

⁵²⁴ i.e. Kate Millett, *Sexual Politics* (Garden City, NY: Doubleday 1970)

As such, the feminist stance tends to lead to two general modes of discussion – sex-worker discourse and exploitation discourse. The model indicates that ‘Women become prostitutes because of prior victimisation by men.’⁵²⁵ The GMV model also in part considers the ‘essential’ and very real element of violence in prostitution. Examples of such violence can be found as shared by sex workers on the website Punternet.com. On the website, blogs allow sex workers to share experiences, warn other workers of potentially dangerous clients or problems in particular areas. As far as research in prostitution goes, the discourse specifically related to violence in prostitution is vast, extending beyond the space available here, but the reader is directed to various other sources for further information.⁵²⁶

The GMV model examines the links between prostitution and poverty, and choice of sex workers to engage in prostitution for economic benefit. Høigård and Finstad go further to state that ‘Money is *the* reason for prostitution’,⁵²⁷ thus creating links between this explanatory model and the economic position and poverty model as discussed above. So far under this heading, the suggestion has been that those who advocate a GMV model are ‘anti-prostitution’, however, there exist a number of academics, some of whom are former sex workers themselves, who take a different view on this model. This leads us to an area of the literature within the GMV model which is known as the ‘sex worker discourse’ model.

In this GMV sub-model it is argued that sex work is a ‘right’ of women, and as much as there is feminist discourse *against* prostitution as exploitative of women, there is much, inter alia, feminist academic comment on the rights of women to work in the sex industry too. Discourse surrounding sex work and exploitation, as two polarised positions is dominated by feminist voices. For example, Overall describes the feminist discourse on sexuality as:

a split between an emphasis on sexual freedom and pleasure that views women exclusively as agents, on the one hand, and an emphasis on sexual danger and degradation that sees women exclusively as victims on the other.⁵²⁸

She continues, ‘...the subject of prostitution provides a particularly sharp example of this split in feminist thought.’⁵²⁹ In her 1992 article, she suggests ways in which the views of each side could somehow be recognised – as starkly different as they were/are, and, as the title of

⁵²⁵ Phoenix op cit 61

⁵²⁶ C.f. generally the works of Rosie Campbell (2001), Hillary Kinnell (2001; 2006), S Church (2001), Neil McKeganey (1996) and Margarita Barnard (1996)

⁵²⁷ Høigård and Finstad op cit 40

⁵²⁸ Christine Overall, ‘What’s Wrong with Prostitution? Evaluating Sex Work’ (1992) 17(4) Signs 705, 707

⁵²⁹ Ibid

the article suggests, seeks to answer the question of whether there is actually anything *wrong* with prostitution. She also points out, interestingly, what are in her view more traditional motivations for condemning sex work, including ‘a hatred of women...or a hatred and fear of sexual activity itself.’⁵³⁰

In feminist theory we find narratives of male dominance and female submission, which seem key to these arguments.⁵³¹ Tied in with the sex work discourse, comes consideration of trade and economics. For some, sex workers should be entitled to form unions and possess employment rights as a valid group of workers, in a recognised trade, as illustrated in 1998 when the International Labour Organisation (ILO) called for sex work to be recognised as a valid ‘trade’. Groups such as the English Collective of Prostitutes have campaigned for such rights for some time, and the ILO’s views on prostitution constitute a grand statement of the way views have changed in recent years to prostitution as a vocation and as an institution.

The ILO’s position as a body of the United Nations gives it a powerful voice on a global scale, in light of which, the image of the sex worker is undoubtedly being altered over time to incorporate a view of prostitution as a trade like any other. One might draw links here with the functionalist theory as discussed above, and Davis certainly opined that prostitution served a reasonable purpose.

Conclusion – Utilizing the GMV Model

Before moving into Part Two of this thesis, it is essential to establish a lens through which the sociology of prostitution is understood and viewed in the ensuing analysis. There are many ways of understanding the sociology of prostitution as discussed above, but one model is adopted here; the GMV model. The GMV model provides particular consideration of the exchange between the sex worker and the client of prostitution. The literature within this model provides a picture of prostitution from a polarised position, and reducing the potential for bias in this study, since it considers pro and anti-prostitution literature.

It also appears that the literature in the GMV model brings into sharp focus, the effect prostitution has upon the sex worker in her health and wellbeing, in the stigma associated with prostitution and the criminalisation thereof as well as physical and mental health issues. The GMV model appears to bring to the forefront of the sociology of prostitution the issue of human rights from the two standpoints.

⁵³⁰ Ibid 708

⁵³¹ Tong op cit 110ff

For instance, for those who have an anti-prostitution stance, and view prostitution as violence against women, the right to protection from inter alia, inhuman and degrading treatment is promoted.⁵³² For those who promote prostitution as sex work, inhuman and degrading treatment are not considerations at all; instead, labour rights are important, and the right to a private life, freedom of expression etc.⁵³³ Issues surrounding rights will be considered in a later chapter, with a focus on Article 3 of the European Convention on Human Rights as it might relate to prostitution and human dignity. Other studies might consider an approach which examines Article 8 rights and labour rights in prostitution as sex work. Article 8 of the ECHR provides the right to respect for private and family life. The right may be drawn upon by sex workers who claim that it is their right to conduct their sexuality as they so choose, for example.

Using the GMV model to inform the research may be controversial because the model has traditionally been adopted to view sex workers as *victims*. Such a viewpoint is not assumed in this study, but instead an analysis of the central issues within the prostitution encounter as promulgated will, it is asserted, identify any potential violations of human dignity in prostitution. Also, in consideration of the 'pro-sex work' ethos, the study will consider how human dignity might be supported by prostitution, in the element of autonomy as dignity, later on.

In summary then, the sociology of prostitution has been introduced, and the explanatory models in the sociological study of prostitution have been considered. From those principal models, the GMV model has been deemed most applicable to inform the ensuing study. The following section explores the different markets of prostitution. The aims of this section are to build upon the sociological background of prostitution, to inform the reader of the practical out-workings of prostitution. The reader will, by the end of the next section understand how prostitution is typically conducted.

Prostitution Markets

As might be imagined, there is no universal method for the conduct of prostitution. The reader is introduced to the idea that, to adopt terminology from the discipline of economics; there are different *markets* of prostitution. Sanders states that there are several different markets in prostitution, including licensed saunas, brothels, working premises (private

⁵³² I.e. MacKinnon op cit

⁵³³ See Kamala Kempadoo, 'Globalizing Sex Workers' Rights' (2003) 22(3-4) Canadian Woman Studies 143

premises), escort work (Visiting; 'outcalls'), home working (including webcam work), the street market (or 'the beat'), and pornography.⁵³⁴ Locations, services, rates and clientele will all differ dependent upon which market/s the sex worker operates in. Some markets will operate in legality, whilst others will not.

For example, saunas are legally compliant with a licence, as other entertainment licences such as liquor licences are, where that sauna is not operating as a brothel, which would be illegal⁵³⁵. A brothel is defined in the amended Sexual Offences Act 1956, as an establishment '...to which people resort for practices involving prostitution'.⁵³⁶ Reference is made in that section to the definition of Prostitution as given in s.51 (2) Sexual Offences Act 2003; the statutory definition given above in this chapter. Brothels are illegal in the UK at present, but the law surrounding this is unclear.

Women can legitimately work from home individually, providing sexual services from flats or houses. They may work from home and operate a 'webcam' service – where clients purchase time with the sex worker who strips or performs sex acts over the internet via the webcam. These services, in contrast to the usual 'direct' sex work involving 'genital contact' are sometimes termed 'indirect' sex work.⁵³⁷

Street prostitution is considered very much in a league of its own. This is in the sense that street prostitution is considered in the literature to be far more violent and dangerous, empirically speaking, than indoor work. Street work is not in itself illegal, but soliciting for sex is illegal, as is 'kerb-crawling'.⁵³⁸ Escort workers tend to visit clients at their homes or in hotels and other premises. It is apparent in the literature that some of the markets are safer and more lucrative than others, and street work, for instance is more dangerous⁵³⁹, and often less lucrative than sauna-based prostitution, or indoor prostitution in general.⁵⁴⁰ As Phoenix identifies, based on Wilkinson's earlier work, some sex workers are coined with the term 'higher end' workers⁵⁴¹, with higher potential earnings as they target more wealthy clients.

⁵³⁴ Teela Sanders, *Sex Work: A Risky Business* (Willan 2005) pp14-19

⁵³⁵ Sexual Offences Act 1956 s.33

⁵³⁶ S.33A

⁵³⁷ Sanders et al op cit 18-19

⁵³⁸ Sexual Offences Act 2003 s.51A

⁵³⁹ Sanders et al op cit 43

⁵⁴⁰ See Weitzer op cit

⁵⁴¹ See, for example Phoenix op cit 51

She differentiates between the terming of different types of prostitutions, such as ‘bread and butter trade’, ‘high-class work’ and ‘drug-related work’⁵⁴²

The treatment sex workers receive from clientele, and others in general can differ dependent on the type of market they operate in, too, as one account explains that there are, in her opinion, class divisions within prostitution:

...It breaks down around race, but also class background. I am in an elite position because some friends who had worked for years on the street built up a different kind of clientele, business men...When people talk about hookers and whores, they don't mind the women who are on call, you know, the women who have clientele, it's the women on the streets they nab on...'⁵⁴³

As there are different markets for prostitution, motivations for entering sex work can differ too, and are specific to each market. O'Neill indicates four potential motivations for entering into prostitution; economic need; prior association with the sub-culture; drug dependency; or those vulnerable and in local authority care.⁵⁴⁴ On reflection, O'Neill's listed motivations appear to reflect the themes running through the explanatory models, above. The causes of entry into prostitution can also naturally be the reasons for retention in the sex trade; drug dependency can keep women from exiting prostitution.⁵⁴⁵

Whatever the motivations, it has been estimated around 80,000 people in the United Kingdom engage in prostitution⁵⁴⁶ – although this figure is perhaps impossible to verify because the specific act of selling sex is one which can be overtly or covertly done. It is also very apparent that some people step into the sex trade and out of it very quickly, or may simply sell sex to a client or even to a friend on one or maybe a handful of occasions, never to return to it in the future.

Reports are given (largely in tabloid newspapers) of women who have performed in strip clubs, or on webcams for extra money, particularly to pay off student loans.⁵⁴⁷ Of course, the work is very lucrative, with minimal outlay, and usually cash in hand which negates,

⁵⁴² Ibid 51

⁵⁴³ 'Nell' Ibid 53

⁵⁴⁴ Maggie O'Neill, *Prostitution and Feminism* (Cambridge: Polity 2001) 83

⁵⁴⁵ T May, G Hunter, 'Sex work and problem drug use in the UK: the links, problems and possible solutions', in Rosie Campbell and Maggie O'Neill (eds) *Sex Work Now* (Cullompton: Willan 2006)

⁵⁴⁶ Figure taken from a 1999 Europap-UK survey, quoted in: Home Office, 'Paying the Price: A Consultation Paper on Prostitution' (2004) London: Home Office Communication Directorate

⁵⁴⁷ One such tabloid report; <http://www.dailymail.co.uk/femail/article-2605809/Lap-dancing-webcam-work-teach-transferable-legal-skills-Law-student-set-scoop-funds-degree-stripping-online-earns-50k-year-it.html> accessed 16th April 2014

necessarily the payment of taxes; (i.e. the 2006 Home Office Coordinated Prostitution Strategy (2006) report explains that prostitution is taxable). In licensed saunas, sexual services are covertly offered and such establishments operate under the guise of providing only massage and affiliated treatments.

For sex workers in these environments, work is generally considered safer, but the volume of clients per day is much higher than in some other markets, such as in the escort or home-working markets⁵⁴⁸. As a market, pornography has some differences and similarities to prostitution.

Pornography might be described as 'sexually explicit material consisting in graphic pictorial depictions and verbal descriptions of sexual organs and various modes of coitus'.⁵⁴⁹ As an institution, pornography itself is a substantial area of research and debate extending beyond the scope of this thesis, yet is certainly tied in with prostitution, and for the purposes of this thesis, is considered a form of prostitution, in view of the expanded definition of prostitution, given in the next chapter.

Using that legal definition, it is asserted that pornography is another prostitution market/variant that could reasonably be defined as prostitution without stretching the definition too far. One clear difference is the absence of physical sexual contact between sex worker A and client B, but this is negated by the fact that A commits sexual acts, or has sex with sex worker D, for the gratification of client B/C, in return for some reward, thus completing the expanded definition in this chapter. Also, it will be observed that webcam work in prostitution has clear links to pornography. In spite of the lack of de facto sexual contact between sex worker and client, a prostitution encounter has taken place as per the statutory and expanded definitions.

Readers seeking further philosophical debate, particularly from a feminist perspective on pornography are directed to a number of authors on the subject.⁵⁵⁰ Essentially, some feminist thinkers view pornography as oppressive to women because it is linked to sexual violence. To this end, for example, Catherine MacKinnon is a well-known voice on pornography and the objectification of women. This theme is echoed by Valerie Bryson, who states that pornography is 'said to distort human sexuality, and to maintain gender inequality by treating women as objects and sexualising their subordination'.⁵⁵¹

⁵⁴⁸ See the literature from O'Neill, Pitcher and Sanders, Scambler and Scambler and Phoenix.

⁵⁴⁹ Tong op cit 112

⁵⁵⁰ I.e. Susanne Kappeler, *The pornography of representation* (John Wiley & Sons, 2013)

⁵⁵¹ Valerie Bryson, *Feminist Debates: Issues of theory and Political Practice* (Macmillan Press Ltd 1999) 184ff

The markets referred to are explicit frameworks in which a traditional concept of prostitution takes place. But it is recognised in recent times that the lines between mercenary and non-mercenary sexual relations are blurred. Of course, to suggest that the markets suggested above are exhaustive of all prostitution that takes place universally would be incorrect and naive.

This is demonstrable by new trends in sex work which cast grey areas over the previously understood sex worker/client relationship. Academic research in the sugar daddy type relationship appears to reside in the research in African nations.⁵⁵² The relationship referred to here is described in recent tabloid media as an apparently emerging trend known as the 'Sugar Daddy/Sugar Baby' relationship⁵⁵³.

In the sugar daddy relationship, men, who are usually wealthy businessmen will contract with younger women for a relationship which may or may not include sexual activity. One student, interviewed by a glossy women's magazine explains her experience of being a 'sugar-baby':

I'm a 19-year-old law student with a passion for politics and BIG [sic] career ambitions. I also date and have sex with older men in exchange for a hefty monthly allowance, and I'm not ashamed of it... Whenever someone asks me how I define the Sugar Daddy/Sugar Baby relationship, I say it's mutually beneficial. One based on respect but also chemistry – with none of the hassle of a 'normal' strings-attached relationship. They get physical affection, intelligent conversation and someone pretty on their arm, I get a millionaire mentor and £2k a month. Everyone wins.⁵⁵⁴

It is apparent that this 'sugar-daddy/baby' setup draws comparisons with escort services, as described above. This type of arrangement only fulfils the criteria set out in the definition of prostitution above, if sexual activity takes place in the contract. There exists some form of agreement or contract between the parties, but for a girlfriend/boyfriend relationship that

⁵⁵² I.e. Nancy Luke, 'Confronting the 'sugar daddy' stereotype: age and economic asymmetries and risky sexual behavior in urban Kenya' (2005) *International family planning perspectives* 6; Dominique Meekers, Anne-Emmanuèle Calvès 'Main girlfriends, girlfriends, marriage, and money: the social context of HIV risk behaviour in sub-Saharan Africa' (1997) *Health Transition Review* 361; Miriam J Temin, 'Perceptions of sexual behavior and knowledge about sexually transmitted diseases among adolescents in Benin City, Nigeria' (1999) *International Family Planning Perspectives* 186; Fiona Leach, Pamela Machakanja, 'The sugar daddy trap. Peer pressure pushes girls into sex' (2001) *Insights: Development Research* 1

⁵⁵³ 'The rise and rise of the student Sugar Babies' *Cosmopolitan Magazine Online* 27th January 2015 <http://www.cosmopolitan.co.uk/worklife/campus/a33002/student-sugar-babies-uk/>; 'Meet the student having sex with 'Sugar Daddies' to further her career', *Cosmopolitan Magazine online* 29th January 2015 <http://www.cosmopolitan.co.uk/worklife/campus/a33037/what-its-like-being-sugar-baby/> accessed 11th February 2015

⁵⁵⁴ 'Anonymous', 'Meet the student having sex with 'Sugar Daddies' to further her career', *Cosmopolitan Magazine online* 29th January 2015 <http://www.cosmopolitan.co.uk/worklife/campus/a33037/what-its-like-being-sugar-baby/> accessed 11th February 2015

might be exclusive of sexual relations. Where no sexual activity takes place, a prostitution encounter does not occur. This type of relationship is unique in prostitution, and skews its traditional understanding. This is about the purchase of *intimacy*, and the purchase of companionship, as opposed to the widely held image of the prostitution encounter being purely payment for sex.

Conclusions Relating to Prostitution Markets

There are explicit markets for prostitution, and also innumerable relational nuances which involve the exchange of sexual services for some financial reward. Also, prostitution does not always have to involve a physical sexual encounter between the sex worker and the client, since the availability of modern technology such as webcam communication allows sex work to be conducted via internet video services rather than in person. This is still 'indirect' prostitution, according to the expanded definition, since the sex worker is performing sexual acts and services, and accordingly fulfils the above definition of prostitution.

The next section considers the party representing the other half of the prostitution encounter – the client of prostitution. There will be an exploration of the issues researchers identify in the client experience, and a specific issue located in the client's experience, the 'purchase of intimacy', which forces a modification of traditional moral understandings of the purchase of sex.

The Client

Typically, research in prostitution has focused heavily upon the sex worker, as opposed to the client. According to Perkins, in 1991 at least, male client research accounted for 1% of all research on prostitution.⁵⁵⁵ Whilst the literature relating to the client is thin in comparison to that explicitly focused on the sex worker, academics in this field remark that sources of information on customers of prostitution are increasing.⁵⁵⁶ A review of the literature makes it apparent that there are a number of prominent factors under consideration and examination by researchers of the client of prostitution. In accordance with conclusions drawn above regarding different markets of prostitution, not all clients purchase sex in the same way, and

⁵⁵⁵ Roberta Perkins 'Working girls: Prostitutes, their life and social control' (1991) Canberra: Australian Institute of Criminology

⁵⁵⁶ Monto (2004) op cit 183ff

what clients seek in a prostitution encounter will differ. This is important to note so as not to consider that all clients are the same in drive, desire, background etc.

An example of consideration to this end is that research which accounts for those male clients who only use street sex workers cannot be used to indicate generalisations about all male prostitution users. Equally, some aspects of the client's motivations are not restricted to a client of prostitution – Monto asserts, for instance, that 'most common motivations for pursuing prostitutes are also experienced by men who are not prostitute users'.⁵⁵⁷ It is also asserted that 'there is no one main reason why men pursue prostitutes and no single variable that differentiates users from nonusers'.⁵⁵⁸ A review of client research reveals considerations of the ethnography of clients, attitudes and orientations of clients, human rights, masculinity issues, and the concept of 'rape myth acceptance' among clients. Teela Sanders' comprehensive work provides a foundational understanding of the diverse *character* that is 'the client' of prostitution. In her work, *Paying for Pleasure* a comprehensive analysis of the male client is made and presented.

Upon review of the literature pertaining to the client of the prostitution encounter, recent research has added to a far smaller selection than that which focuses on the sex worker. There has been, especially in the last 10-15 years, a steady increase in the literature covering this field of the study of prostitution. Methods to obtain accounts vary, but one mode is to use online communication systems to conduct surveys in privacy and confidentiality.⁵⁵⁹ Another problem with conducting such research is obtaining an appropriately large and broad sample, and similarly with research on sex workers, the numbers involved are huge and difficult to target meaningful cross-sections of research samples.

An example of such difficulty would be that it would be very difficult to say what the ratio of married to non-married clients is, although it might be possible to point towards a marginally higher number of married to single clients from the 2008 study.⁵⁶⁰ Equally, it is difficult to isolate the reasons for which men buy sex, as they vary, to include those who are older, or seek exciting sexual liaisons, or those perceived as unattractive by self/others.⁵⁶¹ Sanders

⁵⁵⁷ Ibid 184

⁵⁵⁸ Ibid

⁵⁵⁹ See for instance, Teela Sanders, 'Male Sexual Scripts: Intimacy, Sexuality and Pleasure in the Purchase of Commercial Sex' (2008) 42 Sociology 400; Thomas Holt, Kristie Blevins, 'Examining sex work from the client's perspective: assessing johns using on-line data' (2007) 28 Deviant Behaviour 333

⁵⁶⁰ Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008) 34

⁵⁶¹ Ibid 39

indicates that, in line with previous research, motivations include 'the capacity to purchase specific sexual acts; access to a wide variety of women; the ability to contact women with certain characteristics; limited, temporary relationships; and the thrill of the activity'.⁵⁶² The ways in which clients communicate with each other is also the subject of client research.⁵⁶³

It is apparent then, and seemingly obvious that there will not be a single 'type' of client. A variety of attitudes and orientations are presented by those clients participating in the 2008 research. Some clients express the need for intimacy, friendship or companionship, or to feel 'loved'.⁵⁶⁴ The concept of 'mutuality' can exist, where 'clients believe that sex workers are experiencing emotional and sensual closeness as well as sexual pleasure'.⁵⁶⁵ Sanders has considered the research over the past few decades which has explored the way in which clients attempt to find intimacy in prostitution. The concept of the girlfriend experience (GFE) has been developed to explain the experience that mainly 'regular' clients seek which combines a physical sexual and also an emotional and intimate relationship.⁵⁶⁶

The website 'Punternet.com' provides clients with the opportunity to review experiences they have had with, and the quality and standard of service of sex workers. Two quotes below are comments relating to a sex worker called 'Chloe Kisses':

If you're looking for gfe, then Chloe is the lady for you. As soon as I arrived and sorted out the paperwork, she started kissing me and sexily undressing me. This soon brought me to attention. I had an assisted shower. This was a first for me, but certainly won't be the last time.⁵⁶⁷

It started with a kiss. Doesn't everything? It ended with total satisfaction. Chloe has a relentlessly inventive approach to delivering an excellent service. If the industry had a quality standards, they would be called. the Chloe standards. For me, she defined what good is.⁵⁶⁸

It is presumed from the name of this particular sex worker, that she advertises GFE services, and kissing is a specific service some men seek out.⁵⁶⁹ For others, the prostitution encounter

⁵⁶² Ibid 39

⁵⁶³ Holt and Blevins op cit

⁵⁶⁴ Sanders op cit 88ff

⁵⁶⁵ Ibid 98

⁵⁶⁶ Ibid 88ff

⁵⁶⁷ <http://www.punternet.com/index.php/reviews/118835-Review-of-Chloe-of-Milton-Keynes?fs=3>

⁵⁶⁸ Review of 'Chloe Kisses'; <http://www.punternet.com/index.php/reviews/119192-Review-of-Chloe-of-Milton-Keynes?fs=3>

⁵⁶⁹ Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008) 88ff

serves to provide convenient release of unilateral sexual 'need', which can be conventional or deviant. The attitude of clients to the specific commercial nature of the prostitution encounter is also something which differs amongst interviewees. What remains perhaps an unanswered question is whether the attitudes of those interviewed are limited to the prostitution encounter, or to sex in general.⁵⁷⁰

There are several further key factors that client research encounters. Firstly, philosophical approaches might deal with embodiment and disembodiment in clients, of masculinity in society as defined in modern liberal democracies, male domination/control over women, and biological need. Furthermore, studies have been conducted which have explored the perceptions of clients who are violent towards, or have acceptance of violent behaviours towards women, and in particular sex workers.⁵⁷¹

A particularly extreme example of these behaviours is the concept of 'rape myth acceptance' ('RMA'), as coined by M R Burt in 1980, which describes male acceptance, through cultural and social ideals, of violence against women, including rape.⁵⁷² The mind-set of RMA leads to the belief that women (but in this context sex workers) cannot be raped, and women that are raped are in some way responsible for the treatment they receive,⁵⁷³ an attitude it is believed is traditionally aimed at and centred on 'the prostitute'.⁵⁷⁴

With such dialogues it is easy to see the client as the perpetrator of harm and the sex worker as the victim thereof. This thesis does not provide the capacity to consider the entirety of the client's experience in identifying any possible dignity violation. One highlighted aspect of the client experience is the purchase of intimacy, which, as a motivation for buying sex is apparent from the general literature on the client experience in prostitution.⁵⁷⁵

⁵⁷⁰ See Wendy Hollway, 'Gender Difference and the Production of Subjectivity' in I Henriques, W Hollway, C Brown, C Venn and V Walkerdine (eds) *Changing the Subject* (London and New York: Methuen 1984)

⁵⁷¹ For example, Noel Bridget Busch, Holly Bell, Norma Hotaling, Martin Monto, 'Male Customers of Prostituted Women' (2002) 8(9) *Violence Against Women* 1093

⁵⁷² See Martha Burt, 'Cultural myths and supports for rape' (1980) 38 *Journal of Personality and Social Psychology* 217-230

⁵⁷³ See Monto and Hotaling op cit 277

⁵⁷⁴ Jody Miller, Martin Schwartz, 'Rape myths and violence against street prostitutes' (1995) 16 *Deviant Behaviour* 1-23

⁵⁷⁵ Teela Sanders, 'Male Sexual Scripts: Intimacy, Sexuality and Pleasure in the Purchase of Commercial Sex' (2008) 42 *Sociology* 400; Christine Milrod, Ronald Weitzer, 'The intimacy prism: Emotion management among the clients of escorts' (2012) *Men and Masculinities*; Julie O'Connell Davidson, 'Let's go outside: bodies, prostitutes, slaves and worker citizens' (2014) 18(5) *Citizenship Studies* 516; Kirsty Liddiard, "I never felt like she was just doing it for the money": Disabled men's intimate (gendered) realities of purchasing sexual pleasure and intimacy' (2014) 17(7) *Sexualities* 837

Summary and Next Chapter

This chapter has reviewed the sociology of prostitution, introducing the reader to the discipline, and the explanatory models. The reader has been introduced to the markets of prostitution. Motivations for entry into, and retention within prostitution were considered. The research pertaining to the client of prostitution was briefly reviewed, highlighting the pertinent issues the client faces. The chapter also considered what has been observed as the dominant legal attitude towards prostitution, which lies in criminalisation based on a moral reflection on the sale of sex. The newly constructed model of dignity, IPA, will now be applied to prostitution as refined through the lens of the GMV model of the sociology of prostitution. This, it is suggested will allow more thorough contemplation and analysis of the experiences of sex workers. As such, the IPA dignity as framed through Finnis will indicate an advance in legal approaches to prostitution, and highlight the original contribution this thesis makes. This chapter concludes Part Four of the thesis and leads into the final Part Five. In the next chapter and Part, the hypothesis will be addressed using phenomenological analysis of sex worker narratives. By doing this, the next chapter will present findings as to the hypothesis question “Does prostitution violate human dignity?”

12. APPLICATION

This is a study about prostitution which breaks from the traditional social and legal approaches to the subject. As was discussed in Chapter 10, much social research in the field of prostitution has been conducted using empirical methods, interviewing sex workers and their clients to obtain accounts that express the raw experience of prostitution.⁵⁷⁶ The instant study has thus far used legal theory as a methodological approach to define human dignity. Now, this penultimate chapter will utilise the raw experience data from the sociological literature in collaboration with the theory of dignity, now modelled as IPA dignity. IPA dignity will now be applied to the prostitution encounter to address the study hypothesis; ‘Does prostitution violate human dignity’.

A Note on the Sources of Narratives

The narratives discussed below have been selected from the empirical data of existing, peer-reviewed studies,⁵⁷⁷ located in the substantive literature.⁵⁷⁸ The selection of the sex worker narratives used is based upon locating narratives which are as balanced as possible,⁵⁷⁹ which provide experiences exclusively of the prostitution encounter, rather than other facets of the prostitution vocation.⁵⁸⁰ Future research, based upon the methods used in this study might conduct in-depth interviews with sex workers and clients of prostitution to explore narratives from many different demographics, including male and transgender sex workers, for example.

⁵⁷⁶ An observation made in Phoenix op cit 13

⁵⁷⁷ It is important to note that the data from these studies is more reliable compared with interviews which might have been carried out purely for this study. This is so because, firstly, they are peer-reviewed studies and have been subjected to academic scrutiny, and secondly the researchers responsible for obtaining these narratives are experienced social workers and sociologists, able to extract relevant and detailed information from interviewees. This was an integral consideration for the outset of this study, and resulted in the decision not to conduct fresh interviews with sex workers, but instead to rely on existing work.

⁵⁷⁸ Appendix B provides a table which indicates the sources of narratives as they are presented in the literature. See Chapter 2 which sets out the texts used with justifications. Appendix C sets out the dataset of the narratives for comparison between the texts.

⁵⁷⁹ In Chapter 2, pp24ff

⁵⁸⁰ The literature presents many different narratives taken from interviews with sex workers. Narratives follow common themes such as those which detail entry into prostitution, drug and alcohol use, relationships with pimps etc. Therefore the narratives chosen detail experiences of the prostitution encounter exclusively. The narratives are also importantly placed, it is asserted, in the GMV model of sociological research into prostitution.

A Note on Inductive Reasoning

In Chapter 3, inductive reasoning was used to determine the nature of human dignity from the literature. It did so by identifying two central themes of dignity and ascribing these as the core ideas of the nature of dignity. As Paul Tomassi suggests, inductive reasoning, put simply, is reasoning 'from the particular to the general'.⁵⁸¹ Such a statement has been called an 'ampliative' statement – as 'the conclusion goes beyond, amplifies the content of the premises'.⁵⁸² The two core themes of dignity, that it is inherent and that it is related to autonomy, are amplified to determine that these *are* most likely to represent what dignity is.

This application chapter will utilise inductive reasoning from the sample of sex worker narratives considered. The same inductive method is utilised in relation to the sex worker narratives presented. It will be induced from small samples in this chapter, that dignity is violated and also promoted by prostitution. Although not necessarily capable of providing support for a general conclusion that all prostitution violates human dignity, the results in this chapter are illustrative, and therefore valuable to show how IPA can be applied in reality.

Application – Phenomenological Analysis of Sex Worker Narratives

In this analysis, the sex worker narratives will be analysed to ascertain language within which indicates that particular modes of dignity violation have occurred, in the experience of the narrator. As will be recalled from Chapter 2, the Wittgensteinian approach to language examines 'family resemblances'. The narratives adopted will be grouped into three sections, each discussing dignity violation in the three elements of IPA dignity.

1. "It bothered me in the beginning that all I was, was a piece of meat someone was f**king."⁵⁸³
2. "If anything a prostitute treats herself like a chair for someone to sit on. Her mind goes blank. She just lies there. You become just an object. A lot of clients say 'Respond, it doesn't seem normal just lying there'. After a while it becomes just a normal thing. Most of them know –

⁵⁸¹ See Paul Tomassi, *Logic* (Routledge 1999) 7-9. Tomassi refers to Charles Sanders Peirce - a ground-breaking logician who founded and championed pragmatism and was particularly influenced by the work of Immanuel Kant.

⁵⁸² Ibid. Tomassi is referring to a famous idea of Peirce from his work. See Charles Sanders Peirce, *Collected Papers of Charles Sanders Peirce Vol. 5* (Harvard University Press, 1974); Charles Sanders Peirce, N Houser *The Essential Peirce: Selected Philosophical Writings Vol. 2* (Indiana University Press, 1998)

⁵⁸³ 'Katrina' in Phoenix op cit 131

they understand it would be physically impossible. You don't get excited. Some you like, you talk to them, you get to know them but it's still the same turn off thing."⁵⁸⁴

3. "In the end, you hate yourself for selling your body. They [the punters] do what they want to you. Your body's an object and you've got no control over it."⁵⁸⁵

This first narrative is given by female sex worker 'Katrina'. Katrina speaks in context as a sex worker, explaining how she felt at the start of her profession in the sex industry. She expresses that she was 'bothered' in the beginning (when she first began performing sex work), that she was a piece of meat someone was having sexual intercourse with. This narrative suggests that Katrina viewed herself, if not now at some point in the past as an object – a piece of meat, rather than as a person, in the context of the sex work she was performing.

The second narrative is given by Dee. This narrative shares some similarities with Katrina's, but in the language used by Dee, we find much more detail about the objectification she experiences in prostitution. Also, this narrative causes us to ask the question of whether the sex worker can objectify herself. The language indicates this, since she refers to treating herself as like an inanimate object, like a chair for someone to sit on. She indicates that the sex worker becomes 'like' an object, but retains the sense of autonomous decision making about the process – a deliberate decision on behalf of the sex worker to devoid herself of conscious thought whilst the prostitution encounter takes place. It is reminiscent of the coping mechanisms of some sex workers, as described in the literature.⁵⁸⁶

Dee also speaks about the disconnection between the sexual act and sexual gratification on the part of her, as the sex worker. In her experience, she doesn't enjoy the prostitution encounter in a sexual way – it is merely a job. She goes further to indicate that she believes it to be physically impossible to obtain pleasure from the experience. Finally, the third narrative here is given by Lois. She explains that her body is an object, but that she has no control over it. This appears to differ from some other accounts⁵⁸⁷ in respect of the element of control and the sex worker's agency in the prostitution encounter. All three narratives

⁵⁸⁴ 'Dee' in Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998) 39

⁵⁸⁵ 'Lois' in Phoenix op cit 133

⁵⁸⁶ i.e. Graham Hart, Marina Barnard, "Jump on top, get the job done": strategies employed by female prostitutes to reduce the risk of client violence', (2003) from Elizabeth Stanko (ed), *The Meanings of Violence* (London: Routledge 2002/3); Høigård & Finstad (n 65) 63ff

⁵⁸⁷ Appendix B; Narratives xi and xv, for example, speak very much of control in the prostitution encounter.

mainly express objectification, dehumanization and exploitation, all of which will now be considered.

Objectification

Within the first narrative it can be interpreted that the sex worker has experienced the mode of dignity violation, objectification. Objectification was explained with reference to Martha Nussbaum's taxonomy of objectification in Chapter 8.⁵⁸⁸ This section will now work through each mode of objectification in her model. Firstly, instrumentality; this is demonstrated when the objectifier uses the objectified person as a 'tool of his own devices'. It is not possible from the narrative of Katrina to determine what the client has in fact intended, but it is possible to see that she has experienced instrumentality here.

In Nussbaum's taxonomy of objectification, the experience of the objectified person is not essential to proving objectification has occurred. Arguably, this is problematic because that in itself denies subjectivity to the objectified person. In a mode of objectification as defined in this study, the experience of the objectified person is entirely relevant to proving or disproving objectification as a mode of dignity violation. Inertness and denial of autonomy seem to be difficult to demonstrate based upon this narrative. The question to be asked to determine if inertness is invoked, is has this objectified person been treated as lacking in agency and also in activity. It may have been the intention of the client to objectify Katrina, but it might also be surmised from the narrative that Katrina was a willing party to this act or acts of prostitution, negating inertness, and retaining autonomous decision making.

Fungibility is demonstrated where the objectified party is treated as interchangeable – like currency. Katrina likens herself to a piece of meat. A piece of meat is certainly interchangeable, since it bears none of the characteristic uniqueness of the human person that is so integral to human nature. It denies the 'person' within the outer body (this is dehumanization, as will shortly be discussed). Violability might be indicated where an objectified person is subject to a demolition or transgression of personal integrity (bodily or mental integrity). There is evidence on this narrative that bodily integrity has been transgressed, but perhaps through the permissive acts of Katrina as the potentially objectified person. She presumably consented to bodily integrity transgression, through intercourse with the client.

⁵⁸⁸ Martha Nussbaum, 'Objectification' (1995) 24(4) *Philosophy & Public Affairs* 249

Katrina makes no indication in this narrative of ever being or perceiving to be owned by the client, and this could not easily be inferred. The last mode of objectification is denial of subjectivity. Katrina indicates that her experience and feelings may not have been taken into account in her experiences during the prostitution encounter. When a review is made of these modes of objectification, we find that Katrina has suffered objectification through, at least instrumentality, fungibility and denial of subjectivity she experiences in the prostitution encounter.

Dee expresses that objectification takes place, entirely through her own volition. It is Dee whom objectifies Dee herself in this narrative. It is, to her about how she treats herself, rather than necessarily how the client treats her. Instrumentality is demonstrated as she treats herself as a tool of the client's devices. Denial of autonomy is harder to fathom. On the face of the narrative, Dee seems to make an autonomous decision towards selling sex to the client. As the reader will find from Appendix B, a number of narratives echo an approach by the sex worker to the prostitution encounter as an agent but not necessarily being completely willing towards the sale of sex.

Inertness is more apparent from this narrative. Although Dee engages in the prostitution encounter, she is perhaps to some extent inert in her behaviour, by deliberately being 'vacant' from the experience, although she presumably exhibits agency through the supposed voluntary nature⁵⁸⁹ of the encounter. As with Katrina's narrative, fungibility and violability may be apparent, whilst ownership is probably not.⁵⁹⁰ Denial of subjectivity is created by Dee herself – she denies her own subjectivity in the sense that her enjoyment of the experience is not a consideration. For Lois, we see a similar expression over her perception of her body. In the context of the prostitution encounter, it is an object, and it is also an object over which she claims to have no control.

Dehumanization

Another mode apparent from these narratives is dehumanization, which, it was asserted in Chapter 8, has considerable overlap with objectification. In considering dehumanization against this narrative, and in line with Haslam's research,⁵⁹¹ (in conjunction with Kateb's

⁵⁸⁹ All the narratives here used are from what present as experiences of voluntary prostitution from the source texts.

⁵⁹⁰ Dee's narrative appears to indicate the element of agency in the prostitution encounter which would rule out actual ownership, as per Nussbaum's model.

⁵⁹¹ Nick Haslam, 'Dehumanization: An Integrative Review' (2006) 10(3) *Personality and Social Psychology Review* 252

approach),⁵⁹² we consider two types of human-like attributes, as outlined in the violating dignity chapter, or human uniqueness and human nature. As will be recalled from that chapter, the denial of either set of attributes will result in one of two forms of dehumanization.

The denial of human nature attributes equals denial of 'humanity', including emotionality, warmth and cognitive flexibility.⁵⁹³ Katrina's narrative indicates that in her experience, if not in fact, her emotionality, warmth and perhaps cognitive flexibility is denied. This is evident in the narrative, along the same lines of enquiry as objectification as the two are inextricably linked. Reference to oneself as a piece of meat reduces one's status to that of an object, and involves dehumanization. It might well be the case that the client/s she experiences this with actually do not treat her as a piece of meat as she states, but in her experience, she feels that this is the case. To Katrina, she considers herself dehumanized and objectified by the experience of prostitution, even if perhaps only in the early stages of her career.

Dee's narrative indicates a level of denial of human nature attributes sufficient to consider that dehumanization has, in her experience taken place. Again, it is Dee who has dehumanized herself in this account, and in fact, the client who seeks a more 'human' response from Dee by asking her to respond during the encounter. Whether a coping mechanism or otherwise, Dee's choice not to respond or be aroused by the encounter, and instead to be 'like a chair for someone to sit on' is a clear indication of denying her own human nature attributes and thus exhibiting dehumanization.

Exploitation

Exploitation can occur even when there is no alternative to that exploitation.⁵⁹⁴ It is also clear that exploitation can be brought about and maintained by a socio-economic or a socio-political status, as opposed to direct exploitation by one person to another.⁵⁹⁵ As has been expressed in the literature, economic need, and drug abuse are two interconnected drivers of women into prostitution.⁵⁹⁶ What is less clear is whether one can exploit oneself. In these three narratives, we cannot be certain that the client is the perpetrator of exploitation. But in

⁵⁹² George Kateb, *Human Dignity* (The Belknap Press of Harvard University Press 2011) 113

⁵⁹³ Ibid 296

⁵⁹⁴ Sensat op cit 35

⁵⁹⁵ Ibid

⁵⁹⁶ The early commentator on the sociology of prostitution, Kingsley Davis, indicated that economic forces are to blame for both the presence and continuance of prostitution; Davis op cit 749

all three narratives, it appears that self-exploitation has taken place. In Dee's account, she expresses self-exploitation. Katrina's narrative is less clear on this self-exploitation because it is very brief. Lois does however indicate the presence of self-exploitation through the 'giving away' of her bodily sovereignty to the client.

The three modes of dignity violation, of objectification, dehumanization and exploitation violate inherent dignity according to IPA. They do so by violating the intrinsic human value of the person subject to objectifying or dehumanizing treatment, or where the 'victim' suffers such treatment in their own perception. Exploitation whether self-inflicted or perpetrated by another, treats a person as a means to an end. Therefore, in the narratives of Katrina, Dee and Lois, it can be reasoned that prostitution has violated inherent dignity according to IPA. The next selection of narratives gives an indication other modes of dignity violation.

4. 'When you're constantly having sex with different guys every night – up to six or even eight – and getting paid for it, you have to switch off and mentally say "It's not me' and 'It's my body he's paying for'"⁵⁹⁷
5. "I never let anyone touch my body. My body is my own, I'm in control of it. When I'm with a punter, I say what goes – what he can and can't do, and they never ever touch me. I cannot stand anyone touching my body."⁵⁹⁸
6. When it comes to the actual sex I just blank my mind off completely. I pretend I'm someone else. I pretend I'm somewhere else. I don't get any pleasure from the sex. Never. I always pretend I'm having a good time and that my client is brilliant because men have their egos massaged – you have to make them think they are brilliant – they pay us to make them feel better about themselves.⁵⁹⁹
7. "Ugh, the whole thing is sick. I close my eyes and ears. I cut out everything to do with feelings. It's never, never okay. It would be totally different with a lover. I'll stop when I get a steady boyfriend"⁶⁰⁰
8. [Narrating a conversation with a client]
"You like to see a man come?"
"Uh huh."

⁵⁹⁷ 'Helena' in Phoenix op cit 133

⁵⁹⁸ 'Imogen' in Sharpe op cit 87

⁵⁹⁹ 'Beryl', Ibid 87-88

⁶⁰⁰ 'Lisa' in Høigård and Finstad op cit 65

“I’d like to put it in, you know.”

“Would you?” Greed and disgust wrestled within me...I undressed and we lay down on the mattress. I turned my head to my side so he wouldn’t try to kiss me.⁶⁰¹

The narratives in this second group indicate dignity violation of the second element of IPA, personal inviolability as dignity. The relevant modes as indicated in Chapter 8, are dis-integration, intrusion and humiliation. The prostitution encounter is about the transgression of many boundaries, not only physical ones. This is evident in the way the narrators speak here. There is a recognition that certain measures have to be put in place to ensure the sex worker protects her emotions, her character and her own personal sexuality.⁶⁰² This is commonly referred to in the literature as bodily dissociation, in an overarching theme of the GMV model of prostitution as violence to women.⁶⁰³ Bodily, psychological and emotional intrusion may all be relevant from these accounts. Each narrative suggests that the narrator is seeking to protect herself in the prostitution encounter. Whilst in these instances physical intrusion is allowed, she is trying to protect herself from an unwanted psychological or emotional intrusion.

Dis-integration

As Leslie Henry alludes,⁶⁰⁴ dis-integration will occur when the person subjected to it is not perceived as a fully constituted ‘whole’. There is a theme which is evident in the first narrative, in which Helena explains that she divides herself up into two parts – body and person. Her experience is that the body takes part in something her person does not. Whether this is actually possible is irrelevant, since it is the experience of the sex worker we are concerned with here. As far as her narrative suggests, this is the case. Helena dis-integrates herself in the prostitution encounter. The second narrative is less clear. Is Imogen saying that she does not allow the client to touch *her* – her person; or her body? It seems a confusing narrative, given that in the prostitution encounter, the body of the sex worker is touched and intruded upon.

⁶⁰¹ ‘Emma Marcus’ in Delacoste and Alexander op cit 25

⁶⁰² This is a theme evident in all the source texts. See in particular the commentary in Høigård and Finstad op cit 74, and later, in a discussion about prostitution as violence to women at 114ff.

⁶⁰³ J Raymond, ‘Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere (1998) 21(1) Women’s Studies International Forum 1-9; M Farley (n 723); M Farley, ‘Prostitution and the Invisibility of Harm’ (2003) 26(3-4) Women & Therapy 247; Høigård and Finstad ibid 114ff

⁶⁰⁴ See Chapter 6, Henry op cit

What dis-integration involves, is a breaking down of the person into parts, rather than the completed whole. It is this process which results in a violation of personal inviolability as dignity, since this element of IPA protects the bodily, emotional and physical integrity of the person. This process seems present in these accounts, and also in the fourth account by Lisa. Lisa's narrative more overtly disparages the prostitution encounter, and explains that the disintegration she undergoes is a coping mechanism. The third narrator, Beryl, indicates that it is her tactic to pretend it is not she who is involved in the encounter. She pretends that she is somewhere else. Is this dis-integration? It is perhaps less clear with Beryl's narrative, since she does not speak explicitly as the former two do of a breaking up of parts of herself into body and person as separate entities.⁶⁰⁵

Intrusion

In a criminal legal sense, intrusion might be determined as a physical or sexual assault, or it could also be, for example a burglary of one's home. There are numerous ways in which one can feel a personal intrusion. Is the emphasis only upon a physical intrusion, though? What of emotional intrusion? Even where an intrusion has been made, is it still an intrusion if there is some consent leading to its occurrence? Whilst the first and third narratives here indicate a more mercenary attitude to the intrusive prostitution encounter, the second and fourth accounts are less so.

In the second account, the narrator, Imogen emphasises the control she has over the encounter. She wishes not to be intruded upon beyond an agreed point. For any transgression beyond that point would clearly, on her expression here, amount to a breach of a part of her that would be unacceptable. Intrusion only occurs if the client goes beyond that which has been contracted for.⁶⁰⁶ Lisa indicates something different. It appears that she allows an intrusion across her boundary; (her boundary seems to be any sexual contact in the prostitution encounter), but she does so unwillingly. She may consent to the prostitution encounter, but the factors which push her to do so are not measured, and are indeed immeasurable in this study. The fifth account by Emma Marcus expresses that the intrusive nature of the prostitution encounter is met with disgust by the narrator. She finds the experience disgusting, and yet she continues nonetheless.

⁶⁰⁵ This is clearly an area of research which extends into psychology and beyond the expertise of the author. This analysis does point towards the need to consider such approaches. As mentioned in the above note, the GMV literature has investigated bodily dissociation in female sex workers.

⁶⁰⁶ This might occur in the case of condom removal, for example, discussed in Chapter 11 and later in this chapter.

Humiliation

When we speak of humiliation, we are referring to a degradation of the person. As Klein states,⁶⁰⁷ the experience of humiliation comes in a variety of forms, but results in intense pain through the degrading treatment of others. Lazare lists five key characteristics in a humiliating experience, which include being devalued or dishonoured.⁶⁰⁸ How does humiliation apply to these narratives?

It seems immediately apparent that only two of these narratives; four and five refer overtly to a humiliating experience. Lisa uses language expressing disgust to describe her experience in the prostitution encounter, and even goes so far as to say that she wants to leave the vocation altogether. How is she humiliated? It is asserted that for Lisa, her self-respect is degraded by the prostitution encounter. By saying that 'it's never ever okay' infers that she goes against her own basic principles - the process is disgusting to her, and yet she continues to sell sex. This is evidently a degrading experience. The same theme is evident in Emma Marcus' narrative. The experience she describes is degrading to her, and is thus humiliating.

These narratives express disintegration in the prostitution encounter. These narrators describe experiences of dis-integration, self-administered in order to cope with the repetition of prostitution encounters. Some also describe intrusion across physical and emotional boundaries. Some describe a degrading experience which amounts to humiliation. The next and final selection of narratives highlights autonomy as dignity in the prostitution encounter.

9. It's a business. There's nothing in it for me pleasure wise – I fake and pretend a lot for the client – that's what they pay for – but I never get any actual enjoyment. I get on with it and get it over with as quickly as possible. I'm not a criminal for doing this – I do what men pay for, it's my choice.⁶⁰⁹
10. "It gives you a feeling of power in your job too; everyone likes to be admired. So you could say there's something positive about the job. When I was down there and lots of cars honked at me and I could say yes or drop it. I learned fast that I didn't need to go down there as a beggar – it's the woman who decides. After a while I learned that I was the one made the

⁶⁰⁷ See Chapter 8, Donald Klein, 'The Humiliation Dynamic: An Overview' (1991) 12(2) *Journal of Primary Prevention* 93

⁶⁰⁸ See Chapter 8, Lazare op cit

⁶⁰⁹ 'Belinda' in Sharpe op cit 87

rules; there were enough people to choose from. If people didn't want to follow my rules that was it"⁶¹⁰

11. 'Having a presence and physical body which men found sexually attractive was important to my self-esteem. Having men pay to get turned on by me was an affirmation of my sexual power...Men could want and need me'.⁶¹¹
12. Would you like men using you all the time? I'm not ashamed of what I do – if I was then I wouldn't do it. When I get depressed I need sex. Sex cheers me up, makes me feel better, that's why I work so much.⁶¹²

Autonomy as dignity may be expressed as a freedom to make one's own decisions about life, the direction in which they progress in work, family life, choices about marriage, relationships, religion, sex, friendships, job choice and so on. It may be in a negative iteration, the prevention of that which would seek to deny such agency. For many women, as we have identified, free agency and autonomous thought involves working as a sex worker. This choice can represent an autonomous decision, where that choice is uninfluenced by overarching pressures and dictates, such as financial need, or any obvious coercion which might lead to, at the extreme end, a trafficking situation.

What is plain when we speak of autonomy in the context of prostitution, is the clash between individual and communitarian models of dignity.⁶¹³ Autonomy can be restricted for the benefit of the communitarian dignity, and even for the dignity of the individual where the proposed behaviour offends that.⁶¹⁴ In prostitution, we see an individual issue, but also a collective, communitarian one too. The lives and issues faced by sex workers are relevant to the community in which they are placed, and the same can be said for the clients of prostitution that make up that community.

In this third group of modes we consider whether there is evidence of violation, or in fact promotion of autonomy as dignity. The types of mode which violate this element of IPA

⁶¹⁰ 'Eva' in Høigård and Finstad op cit 83

⁶¹¹ 'Judy Helfand', in Delacoste and Alexander op cit 101

⁶¹² 'Imogen' in Sharpe op cit 88

⁶¹³ The reader is directed back to the discussion of the views of O'Mahony and Kidd-White in Chapter 3. Weitzer has written on the issues that affect the community due to street prostitution, whilst advocating a non-regulationist stance on 'indoor sex work'; Ronald Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (New York University Press 2012)

⁶¹⁴ As in the facts of the Wackenheim (dwarf-throwing) Case discussed previously in Chapters 3-6

include restriction of agency, dependence and deprivation. As stated in Chapter 8, the causes of these modes may not be an individual per se, but also by other factors, such as economic need or drug abuse. In these narratives, we derive expressions of pride in the work the narrator does.

Restriction, Deprivation or Dependence

In these accounts, is there evidence of restriction, deprivation or dependence? Or is autonomy promoted in these narratives? The first narrator, Belinda, explains that it is her choice to sell sex. It isn't a choice made for the enjoyment of the prostitution encounter, but it is in her words a choice nonetheless. A question we might ask, is how freely made is the choice? Are there any alternatives to the choice Belinda makes? Is she in some way dependent on drugs or alcohol, or raising a child and in need of money? As the experience is expressed to us in the narrative, agency is present and Belinda makes, what is at least a partially autonomous decision.⁶¹⁵ The same theme is expressed in the second narrative, where the narrator, Eva states, in determining whether a prostitution encounter will take place, 'it is the woman who decides'.

Power and choice are used together by Eva to indicate that she exhibits agency and hence autonomy in conducting the various prostitution encounters in the course of her vocation. If she doesn't want to sell sex to a client, she says no, and that is the end of the matter. Her autonomy is not, on this account, restricted, deprived of her, nor is she dependent (at least on the client). As before, issues of ancillary dependence lie undetected in these narratives so far. The agency possessed by the narrators is again voiced as a power or control over the client, in the third narrative, as Judy expresses her regard for the attraction men feel toward her. Is there a dependence upon this reaction from men, though? She says that it was important to her self-esteem that men were attracted to her; might this be an affront to autonomy, or perhaps a violation of another element of IPA?⁶¹⁶

This potential dependence is echoed far more loudly in the next narrative, by Imogen. She states that she needs sex. It is to her a means by which she copes with depression. This is a different consideration in this analysis, which has considered dependence on an external

⁶¹⁵ We have to bear in mind that the source texts for these narratives (and all those used in this thesis) are from empirical data gathered in accordance with the ethical considerations stated in Chapter 2 for sex work research. As such, these narratives are not obtained from women in recognised trafficking situations, but are from a mix of prostitution markets.

⁶¹⁶ For instance, the degradation of self-esteem is akin to humiliation, as discussed here and in Chapter 8.

factor, leading to prostitution. Here, Imogen is stating that she is dependent on sex, provided in the prostitution encounter, to manage her psychological state.

Summary and Next Chapter

This chapter has addressed the hypothesis, 'Does the prostitution encounter violate human dignity'. It has also considered, in the context of autonomy as dignity, a contrasting hypothesis; that the prostitution encounter might also promote human dignity. In conclusion, it appears that the narratives presented demonstrate the presence of modes of dignity violation in the experiences of these sex workers. These modes of dignity violation in turn violate respective elements of IPA dignity, and so it is reasoned that the prostitution encounter, as presented by the sex workers in these narratives, can violate human dignity according to the IPA model.

The next chapter concludes the thesis, by assessing the findings in this application chapter, and providing considerations for reform and future research in the fields of study within this thesis. Finally, and returning to the quote of Mary Honeyball, the thesis will once again review the statement of the Honeyball Report, with some comment as to its veracity given the findings of this study.

13. CONCLUSIONS

Summary of Key Points

This thesis has endeavoured to answer the question, “Does prostitution violate human dignity?” and the hypothesis was developed to interrogate the comments of the 2014 ‘Honeyball’ Report.⁶¹⁷ The report’s lack of objectivity and its unbridled use of the language of human dignity for policy analysis and direction caused concern for those researching the field of prostitution. This thesis has explored the core themes of human dignity and developed a descriptive model, IPA dignity. That model was then aligned with a normative framework which was used to indicate why it is wrong in a normative sense to violate dignity as constituted by IPA.

The study began by introducing the concept of human dignity with core themes in the literature, in Chapter 3. As discussed, the concept, often considered as an idea rather than any concrete quasi-legal device has been criticised for vagueness and has been written off by some academics. However, as the ensuing chapters unfolded, they presented human dignity as prevalent in international law, and a foundational concept specifically for human rights law. In Chapter 4 it was explained that natural/moral rights form the basis of legal rights in these international legal provisions, and those natural rights arguably stem from the central theme of dignity as inherent in human beings qua human beings. In Chapter 5, the language of dignity was then identified in Article 3 of the ECHR and a discussion revealed that the courts consider, even if at times implicitly, the dignity of the individual when determining if inhuman or degrading treatment has taken place. In Chapter 6, dignity as it is utilised in American constitutional law and cases before the US Supreme Court was explicated through examinations by leading US scholars, and their individual conceptual models of dignity were presented and explored. This led to the construction of the model which was at the heart of this thesis; IPA dignity, in Chapter 7. Thereafter, the thesis considered the violation of human dignity, and decided upon various modes of dignity violation which could be grouped against respective elements of the IPA dignity model, in Chapter 8. Of the modes addressed, objectification and dehumanization were very prominent, as violating inherent dignity – the most integral element of IPA dignity.⁶¹⁸ Alongside this, dignity violation as apparent in Article 3 jurisprudence was also considered to

⁶¹⁷ Mary Honeyball, *Report on sexual exploitation and prostitution and its impact on gender equality* (2013/2103(INI) European Parliament Report (3rd February 2014)

⁶¹⁸ The assertion that Inherent dignity is the most integral part is made in Part 2

enhance the argument for the development of IPA as a legally recognisable model of dignity, in Chapter 9.

It was then the task of the thesis to provide a normative framework for the IPA model of dignity. Since the purpose of the thesis was to engage with the comments made in the Honeyball report and indicate why it is important that some objective criteria be utilised when using the language of dignity to adjudge a course of action such as the prostitution encounter, it was essential to indicate why dignity ought not to be violated. In chapter 10, the normative natural legal theory of John Finnis was propounded as the framework which would be used in conjunction with IPA to meet this end. This brought to an end the first substantive half of the thesis which explored dignity, modelled it into IPA and applied normativity thereto. The second half of the thesis moved from the legal and philosophical to the sociological, beginning in chapter 11 with a review of the literature in the sociology of prostitution. Salient points were analysed, with an exposition of the main explanatory models used to 'understand' prostitution in the discipline of sociology. The chapter indicated that prostitution is an enormously complex subject to be studied, and therefore reduced the scope of this study towards it to the 'Gender and Male Violence' (GMV) model. The scope of the analysis was specifically in the prostitution encounter as the central issue in prostitution, and the issue at the heart of the Honeyball report – the sale and purchase of sex.

Once the sociological element of the thesis was grounded in chapter 11, the hypothesis was addressed using a unique approach. In chapter 12, narratives of sex workers from the dataset outlined in chapter 2 and Appendix C were analysed for language which indicated modes of dignity violation. Where such modes were identified, it followed that dignity was violated in respect of the elements of IPA that they aligned with. This produced an indicated conclusion to the hypothesis question. This final chapter now concludes the thesis firstly with a presentation of the findings of the application chapter and a conclusion as to the hypothesis. Thereafter, it discusses what the results might mean in respect of policy in the UK, and *a fortiori* Europe and beyond. Finally, and in conclusion to the thesis, next steps and future research will be suggested, with a mention of some ideas not presented here, which nonetheless may be of use in applying IPA dignity to other social issues in future.

Does Prostitution Violate Human Dignity?

Chapter 12 presented the results of the phenomenological analysis of sex worker narratives against IPA dignity. Potential dignity promotion via autonomy as dignity was identified. This dignity promotion was considered evident in the exhibition of agency by the sex worker in the prostitution encounter. Therefore the results of the application chapter were mixed. Firstly,

the narratives suggested that dignity violation can occur in the prostitution encounter according to the scope and methods used. Specifically, the prostitution encounter appeared to violate inherent dignity, by objectifying some of the sex workers and dehumanizing them. It was indicated that personal inviolability as it represents bodily integrity was invariably violated. Dis-integration occurred and yet the narratives presented that this was self-inflicted by the sex worker. A frequent theme was that the sex worker dis-integrated herself in order to 'cope with the demands' of prostitution upon her emotional wellbeing. This tied in with some issues such as bodily dissociation, as discussed by Phoenix and presented in the chapter. It was also indicated that dignity was promoted in respect of autonomy as dignity. This result lies in contrast to the hypothesis question. This study was an experiment in creating a normative model of human dignity and then applying it to a limited dataset from the GMV sociological understanding of prostitution. It has yielded the results discussed, but what do we now do with these results to make meaningful use of them? If we are speaking of dignity being violated according to the application, then a question which arises is why does that need to concern us? Why ought dignity violation be avoided?

Chapter 10 considered and applied the normative theory of Finnis to the IPA model of dignity. The theory indicates that human agents should pursue a course of action which is practically reasonable, one which thus promotes human flourishing because it promotes and does no harm to the objective goods, as explicated. Finnis says that human flourishing; being the product of the combination of the basic goods and practical reasonableness, is more than simply "happiness". Instead it is personal fulfilment which does not necessarily rely upon an emotional aspect; 'a participation in basic goods which is emotionally dry, subjectively unsatisfying, nevertheless is good and meaningful as far as it goes.'⁶¹⁹ A course of action which violates IPA dignity because it involves a mode of dignity violation, once demonstrated can be considered to be offending the normative principles of natural law set out by Finnis, and is necessarily detrimental to human flourishing. The findings of the application chapter and the thesis indicate therefore that, firstly, prostitution violates human dignity because in the narratives reviewed the prostitution encounter, as a course of action involves a mode or modes of dignity violation which violates elements of the IPA dignity model. Secondly, the prostitution encounter, by violating human dignity fails to conform to practical reasonableness (which is the normative call to action not to act in a way which is detrimental to human flourishing). Finally, therefore the statements made in the Honeyball report could be grounded on this objective analysis. The result of this analysis is provision of objective criteria by which human dignity violation may be considered for policy

⁶¹⁹ Finnis op cit 97

recommendation. The assertion that prostitution violates human dignity is affirmed by this study.

Positioning the Thesis and its Results

The results of this study, whilst theoretical, may have some bearing on policy-making or approaches to prostitution by policy makers. The study has highlighted a perhaps previously unnoticed element in the issue of prostitution - the human dignity of the sex worker. Whilst the findings of this study are only theoretical, the study might be considered as a means to open up routes into human rights considerations that were previously unconsidered, for instance into the realms of Article 3 and degrading treatment. From the case-law, discussed at Chapter 9, we know that until now, Article 3 has been reserved for severe acts of degradation, usually, in the sexual context, in cases of rape by officials in custody.⁶²⁰ This study has indicated that voluntary prostitution may violate human dignity, and that the violation of human dignity is necessarily related to Article 3.

The recent policy towards prostitution follows a pattern of de/criminalization, legalization and regulation. In recent months, two reports have emerged which examine prostitution and the global sex trade, with exploitation in mind. The All Party Parliamentary Group on Prostitution and the Global Sex Trade produced a written report in March 2014 entitled '*Shifting the Burden*'.⁶²¹ The second report, which has been introduced in this study was produced by the Committee on Women's Rights and Gender Equality, by Mary Honeyball (colloquially 'The Honeyball Report'). Both reports explore models of dealing with the issue of prostitution and attempting to eliminate sexual exploitation, with three Models being suggested.

Model A involves the criminalisation of associated offences, whilst prostitution itself – the sale of sex is not illegal for the seller or the purchaser. This model is adhered to in the United Kingdom, where exploitation of a sex worker, living off the earnings thereof and solicitation are all illegal. Model B is the Nordic model, an approach taken by Sweden in 1999, creating a criminal offence of purchasing sexual services. The seller is not prosecuted under this model, but the client is. It is this model which is promoted by both reports. This model is advocated for by both reports, in order to reduce the demand for sexual services. Alongside this approach, the APPG report suggests that women involved in prostitution should not be targeted by ancillary offences such as solicitation, which should instead be dealt with under

⁶²⁰ I.e. *Aydin v Turkey* op cit

⁶²¹ i.e. '*Shifting the Burden*' op cit

anti-social behaviour measures.⁶²² The third model, Model C is the approach adopted by the Netherlands, and involves decriminalization and regulation of sex workers. The models have a central aim to eradicate or at least dramatically reduce sexual exploitation by cutting demand. Both reports champion the Nordic model as a means by which this can be achieved, reliant upon the purported success of Sweden's anti-prostitution legislation.⁶²³ But the model, if introduced in the UK should arguably have regard not only to demand for prostitution and its reduction, but also to the rights and, as per this study, the dignity of those involved in the prostitution encounter, not only the sex worker.⁶²⁴

It would appear from these two reports that the dignity of the sex worker is a key focus. They address a protection of the sex worker from perceived harm, whilst enabling a more uninhibited exit from prostitution for those wishing to leave. In this way, the Nordic model seems to promote inherent dignity, and personal inviolability as well. It also champions a Henry-esque 'collective virtue as dignity'; since it promotes an according of dignity between individuals.⁶²⁵ But it cannot be ignored that by severely restricting the sex worker's trade, her ability to work is affected, and this may ironically have a detrimental effect upon her autonomy as dignity, according to IPA. This is not the only concern about the introduction of the Nordic model, and the reader is directed elsewhere to numerous commentators who have argued that the imposition of criminality upon clients will actually increase the levels of violence suffered by sex workers.⁶²⁶ In this way, the very law which is geared towards dignity promotion, may in fact have a negative impact on the dignity of the sex worker. This section presented some recent ideas on how the law should deal with prostitution, and how it should be used to protect the vulnerable.⁶²⁷ In acknowledgement of the limitations of this

⁶²² Ibid 9, 29

⁶²³ The Act on Violence Against Women 1999

⁶²⁴ I.e. as one sex worker remarks of some of her clients; 'Some pay just to talk. They're lonely. I feel sorry for them'; 'Anita' in Høigård and Finstad op cit 52. By criminalising the client, the law might be in danger of victimizing one half of the prostitution encounter whilst trying to help the other.

⁶²⁵ Inasmuch as it paints a picture of prostitution as sexual exploitation being morally wrong, and promotes measures to limit the commodification of human beings. This is obviously challengeable by the sex worker lobby as being a broad-brush approach.

⁶²⁶ There are a number of useful resources and links to many commentators in prostitution and sex work. See the following websites; English Collective of Prostitutes - <http://prostitutescollective.net/>; Global Network of Sex Work Projects - <http://www.nswp.org/research-sex-work>; International Union of Sex Workers - <http://www.iusw.org/>; Sex Work Research - <http://sexworkresearch.wordpress.com/>

⁶²⁷ A thorough analysis of current policy and research is not included here, but these reports represent a general movement towards considering the Nordic model in the UK. Whether this is going to be beneficial or not to those involved in prostitution remains to be seen. The effect on the client is also not considered here. Research might be conducted if a model is introduced which criminalises clients, to interview clients affected by that legislation.

thesis, we next consider future research involving IPA dignity, and how it could be used further in socio-legal research.

Future Research Using IPA

It is essential to consider at this stage what has unashamedly *not* been achieved by this thesis, and demonstrate that consideration has been made to certain other elements that could not be included in this research, and the thesis here presented. By providing this information here, this chapter presents an understanding of external research issues, and positions the research appropriately for others who take these themes and methods further.

Throughout this document, where it has been appropriate and relevant to do so, mention has been made of possible further research that could be undertaken using IPA dignity. IPA dignity is aimed at being used in socio-legal applications, and so it may be used for issues such as homelessness, drug and alcohol addiction or healthcare. As alluded to in Chapter 6, dignity has been modelled previously in the healthcare and nursing context, and is particularly relevant in that sphere. IPA may be useful therefore directly in a healthcare context, in spite of it originating as a model for socio-legal application. It might also be a tool of some utility in legal adjudication, as a means by which to ‘fine-grade’ human rights violations by getting to a more intricate level of the alleged breach of rights. This has in some small way been demonstrated in Chapters 5 and 9 respectively, when talking about dignity and Article 3 ECHR.

These represent some ideas of future research in a mixture of disciplines. What then could be considered in respect of human dignity and prostitution in further studies? This study has concentrated on one gender involved in the prostitution encounter, the female sex worker. Studies may consider male and/or transgendered sex workers. This study was also restricted because no interviews took place with sex workers.⁶²⁸ Future studies may pose questionnaires to current and/or former sex workers, which asks questions pertaining to the violation of dignity. Such questions would consider modes of dignity violation, and so could be tailor-made to elucidate such language as is necessary. Specifically, questions relating to the autonomy of the interviewees could be asked to ascertain the degree to which dignity is promoted through agency in prostitution as ‘sex work’. A very obvious gap in the knowledge which remains after this study is a considered analysis of the violation of the dignity of the

⁶²⁸ In Chapter 2, the reasoning behind the decision not to conduct interviews was made clear. The authority of this study is not harmed by this decision, although it limits the application to seminal texts which are subjectively chosen.

client to the prostitution encounter.⁶²⁹ How does prostitution affect the client, and what modes of dignity violation are possibly implicated in the exchange between him and the sex worker? It is suggested that an issue of particular interest might be the ‘purchase of intimacy’ apparent from the literature.⁶³⁰ Intimacy in itself is of course a large area of study, but it appears at the end of this study, that the client, who is often overlooked in the encounter vis-à-vis his rights, may suffer a violation of his dignity.⁶³¹

Concluding Remarks

The thesis began with a statement from the Honeyball report asserting that prostitution was ‘a very obvious and appalling violation of human dignity.’ Having completed the study objectives and addressed the hypothesis, the findings suggest that prostitution may, indeed violate dignity according to IPA. It has indicated however, that the language of dignity is appropriate for such an assessment only where there is both an objective framework for saying what dignity might consist of, and a normative ‘call to action’ which determines why we that dignity ought not to be so violated.

There is an additional problem which hasn’t been addressed in this study. Mary Honeyball’s assertions appear to be based on the commodification of sex, and on the exploitation of women and children that prostitution and human trafficking in tandem represent. As Weitzer and Doezema have highlighted, albeit from different perspectives,⁶³² the conflation of prostitution with sex trafficking leads to broad-brush dismissal of prostitution as abhorrent and exploitative, without further analysis. It fails to account for the nuances of the prostitution encounter, considered in this study – the fine balance between objectification or other modes of dignity violation and autonomy. Both the promotion of autonomy and the right not to be objectified rest in a tension of respect for the humanity and the dignity of the individual.

This then, is a broader discussion of balances between interests and there are different dialogues for that discussion to take place in. In rights dialogues it is either the right to sell sex or the right to protection from treatment which is degrading. In criminality dialogues, the

⁶²⁹ Whilst it was originally the intention to consider the client’s dignity in this study, this was rejected because much further study was required into ‘the client’ which exceeded the scope of the author’s expertise and the time available.

⁶³⁰ In a leading text of its kind, Teela Sanders addressed the issue of purchasing intimacy. See Teela Sanders, *Paying for Pleasure: Men who Buy Sex* (Willan 2008); ‘Drawing from the empirical findings [she draws] out the range of emotions that male clients experience through the commercial sex experience, including heteronormative male sexual scripts, vulnerabilities and pleasures.’

⁶³¹ For more on intimacy, see, for example Lynn Jamieson, *Intimacy* (Cambridge: Polity Press 1998)

⁶³² See R Weitzer and J Doezema op cit

balance is between actions that cause harm and those that do not. Does prostitution harm the sex worker or the client? Does it harm the community in which it occurs? Farley et al would suggest the answer to be yes, but others who, academically speaking are also reasonably positioned in the GMV model, and who campaign for the legitimisation of sex work would disagree. In dialogues of morality, the balance lies between whether prostitution is *right* or *wrong* in the moral conscience of the society in which it takes place. Is it wrong to sell sex, or is it right to buy it? Is it wrong to prohibit the sex worker from plying her trade, or to stigmatise those who use their services as 'johns'?

In this study, the IPA dignity model was constructed and applied to prostitution. Wider answers to the question of the relation between dignity and human rights were not the explicit subject of analysis. Instead, an application of dignity as a normative model to the sociological issue of prostitution in this study has provided a fresh examination of the prostitution encounter, with consideration of the very human issues, feelings and experiences at its heart. By doing so, prostitution itself is more plainly seen as an organic issue. Its 'players' are identified, albeit here only the sex worker has been examined. There has been much said in this thesis about dehumanization and its mode of dignity violation affiliates. The attempt of this study has been to do the reverse and to 'humanize' the sex worker. It has achieved this by explaining what human dignity is, why it matters and how it applies to the sex worker. It is hoped that future research as suggested above will continue the process of humanization of sex workers as a stigmatised and often 'at risk' group of people, particularly at a time when issues surrounding the criminal status of sex workers and their clients is at a heightened state of consciousness. This study marks the beginning of a new approach towards the sex worker, not as an object of either moral outrage or paternalism, but as an autonomous person, possessing human dignity as presented in the IPA model, which should never be violated.

BIBLIOGRAPHY

i. Books

Abel G, Fitzgerald L, Healy C, Taylor A, (eds) *Taking the Crime out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation* (The Policy Press 2010)

Adler F, Simon R, (eds), *The Criminology of Deviant Women* (Houghton Mifflin 1979)

Alcoff L, Potter E (eds), *Feminist Epistemologies* (Routledge 1993)

Barrett D, (ed) Barrett E, Mullenger N, *Youth Prostitution in the New Europe* (Russell House 2000)

Bates E, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (OUP 2010)

Bell D, *Communitarianism and its Critics* (OUP 1993)

Benjamin H, Masters R, *Prostitution and Morality: A Definitive Report on the Prostitute in Contemporary Society and an Analysis of the Causes and Effects of the Suppression of Prostitution* (London: Souvenir Press 1964)

Bentham J, *Anarchical Fallacies* (Headline Series: New York 1998)

Beyleveld D, Brownsword R, *Human Dignity in Bioethics and Biolaw* (OUP 2001)

Bingham T, *The Rule of Law* (Penguin 2011)

Bix B, *Jurisprudence: Theory and Context* (4th edn Sweet & Maxwell 2006)

Brooks-Gordon B, *The Price of Sex: Prostitution, Policy and Society* (Willan Publishing 2006)

Bryson V, *Feminist Debates: Issues of theory and Political Practice* (Macmillan Press Ltd 1999)

Campbell R, O'Neill M (eds), *Sex Work Now* (Willan 2006)

Capps P, *Human Dignity and the Foundations of International Law* (Hart: Oxford and Portland, Oregon 2009)

Cornwall A, Lindisfarne N, (eds) *Dislocating masculinity: comparative ethnographies*. (Routledge, 1994)

Davis H, *Human Rights Law: Directions* (2nd edn OUP 2009)

De Cruz P, *Comparative Law in a Changing World* (3rd edn Routledge-Cavendish 2007)

Delacoste F, Alexander P, (Eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998)

Denscombe M, *The Good Research Guide* (4th edn Open University Press 2010)

--, *The Good Research Guide* (5th edn Open University Press 2014)

Devlin P, *The Enforcement of Morals* (OUP 1965)

Drew S, *Human Trafficking – Human Rights Law and Practice* (Legal Action Group 2009)

Düwell M, Braarvig J, Brownsword R, Mieth D (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014)

Dworkin R, *Law's Empire* (Hart 1986)

--*Taking Rights Seriously* (Duckworth 1977)

Edin K, Lein L, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (New York: Russell Sage Foundation 1997)

Fagan A, *Human Rights: Confronting Myths and Misunderstandings* (Edward Elgar 2009)

Farley M, *Prostitution, Trafficking and Traumatic Stress* (The Haworth Press 2003)

Feinberg J, *Harm to Others: the Moral Limits of the Criminal Law* (OUP 1984)

--, *Rights, Justice, and the Bounds of Liberty* (Princeton University Press 1980)

Finnegan F, *Poverty and Prostitution: A Study of Victorian Prostitutes in York* (Cambridge: CUP 1979)

Finnis J, *Natural Law and Natural Rights* (OUP 1980)

Foster C, *Human Dignity in Bioethics and Law* (Hart: Oxford and Portland, Oregon 2011)

Foster S, *Human Rights & Civil Liberties* (2nd edn Pearson Longman 2008)

Fredman S, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP 2008)

Freeman M, *Lloyd's Introduction to Jurisprudence* (9th edn Sweet & Maxwell 2014)

Fuller L, *The Morality of Law* (Yale University Press 1964)

Gallagher A, *The International Law of Human Trafficking* (CUP 2010)

Gearty C, Douzinas C (Eds), *The Cambridge Companion to Human Rights Law* (CUP 2012)

Gewirth A, *Reason and Morality* (University of Chicago Press 1978)

Glueck E, Glueck S, *Five Hundred Delinquent Women* (New York: Knopf 1934)

Gruen L, Panichas G (Eds), *Sex, Morality and the Law* (Routledge 1997)

Guyer P, Wood A, (Eds), *The Cambridge Edition of the Works of Immanuel Kant* (CUP 1997)

Harris J (ed) *Bioethics* (OUP 2001)

--, *The Value of Life: An Introduction to Medical Ethics* (Routledge 1985)

Hart HLA, *Law, Liberty, and Morality* (Stanford University Press 1963)

--, *The Concept of Law* ((1961); reprinted OUP 2012)

Hesse-Biber S N, Leavy P L, *Feminist Research Practice: A Primer* (Sage 2007)

Hinde R, *Why Good is Good: The Sources of Morality* (Routledge 2002)

Høigård C, Finstad L, *Backstreets: Prostitution, Money and Love* (Cambridge: Polity 1992)

Hooks B, *Feminist Theory: From Margin to Center* (South End Press 1984)

Hooper LJ, Ormerod D, (eds), *Blackstone's Criminal Practice 2012* (OUP 2011)

Hughes A, *Human dignity and fundamental rights in South Africa and Ireland* (Pretoria University Press 2014)

Humm M, *The Dictionary of Feminist Theory* (2nd edn, Prentice Hall/harvester Wheatsheaf 1995)

Jaget C (ed), *Prostitutes, our life* (Bristol: Falling Wall Press 1980)

Jamieson L, *Intimacy* (Cambridge: Polity Press 1998)

Jowell J, Cooper J, (eds) *Understanding Human Rights Principles* (Hart: Oregon 2001)

Kant I, (Gregor M (tr)) *The Metaphysics of Morals* (CUP 1996)

--, (Gregor M (tr)) *Groundwork of the Metaphysics of Morals* (1998)

Kass L, *Life Liberty and the Defense of Dignity: The Challenge for Bioethics* (Encounter Books: San Francisco 2002)

Kateb G, *Human Dignity* (The Belknap Press of Harvard University Press 2011)

Kempadoo K, Doezema J, *Global Sex Workers: Rights, Resistance and Redefinitions* (Routledge/Taylor & Francis 1998)

Kempadoo K, Sanghera J, Pattanaik B, (Eds) *Trafficking and Prostitution Reconsidered:*

New Perspectives on Migration, Sex Work and Human Rights (Paradigm 2011)

Kingston S, Hardy K, Sanders T *New Sociologies of Sex Work* (Ashgate 2012)

Kinnell H, 'Murder made easy: the final solution to prostitution?' in R Campbell, M O'Neill, *Sex Work Now* (Cullompton: Willan 2006)

Kretzmer D, Klein E (Eds), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International 2002)

Kristeva J, *Powers of Horror: an Essay on Abjection* (Translation by Leon Roudiez) (Columbia University Press 1982)

Levine J, Madden L, *Lyn: A Story of Prostitution* (Women's Press Ltd 1987)

Lim L, (Ed), *The Sex Sector* (International labour office 1998)

Lombroso C, Ferrero G, *The Female Offender: The Normal Woman and the Prostitute* (London: Fisher Unwin 1895)

Luhmann N, *A Sociological Theory of Law* (Routledge & Kegan Paul 1985)

Maguire M, Morgan R, Reiner R (eds), *The Oxford Handbook of Criminology* (4th edn OUP 2007)

Margalit A, *The Decent Society* (translated by Goldblum N) (Harvard University Press 1996)

Marietta Jr D, *Philosophy of Sexuality* (ME Sharpe 1997)

Matthews R, O'Neill M, *Prostitution* (Ashgate Dartmouth 2003)

McCrudden C (Ed), *Understanding Human Dignity* (OUP 2013)

McKeganey N, Barnard M, *Sex work on the streets* (Open University Press 1996)

McLeod E, *Women Working: Prostitution Now* (London: Croom Helm 1982)

Merton R, Nisbet R (eds), *Contemporary Social Problems* (New York 1961)

Millet, K *The Prostitution Papers* (St. Albans: Paladin 1975)

Moeckli D, Shah S, Sivakumaran S, (eds) David Harris (cons ed), *International Human Rights Law* (OUP 2010)

Moltmann J, *On Human Dignity: Political Theology and Ethics* (Translated by Meeks, M D) (Fortress Press 1984)

Munro V, Della Giusta M, *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Ashgate 2008)

Nino CS, *The Ethics of Human Rights* (Clarendon Press Oxford 1991)

- Nussbaum M, *Sex and Social Justice* (OUP 1999)
- , *Creating capabilities* (Harvard University Press 2011)
- O'Connell Davidson J, *Prostitution, Power and Freedom* (Cambridge: Polity Press 1998)
- O'Neill M, *Prostitution and Feminism* (Cambridge: Polity 2001)
- Ormerod D, *Smith and Hogan Criminal Law* (12th edn OUP 2008)
- Osiatynski W, *Human Rights and Their Limits* (CUP 2009)
- Outshoorn J, *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce* (CUP 2004)
- Pateman C, *The Sexual Contract* (Polity 1988)
- Perkins R, Bennett G, *Being A Prostitute* (Sydney: George Allen and Unwin 1985)
- Perry M J, *The Idea of Human Rights: Four Inquiries* (OUP 1998)
- Phoenix J, (Ed) *Regulating Sex for Sale: Prostitution Policy Reform in the UK* (The Policy Press 2009)
- *Making Sense of Prostitution* (Palgrave 1999)
- Rachels J, *Created from Animals: The Moral Implications of Darwinism* (OUP 1990)
- Rachels S, *The Elements of Moral Philosophy* (5th edn McGraw Hill 2007)
- Raz J, *The Authority of Law* (Clarendon Press: Oxford 1979)
- Rawls J, *A Theory of Justice* (OUP 1974)
- Raymond J, *Legitimizing Prostitution as Sex Work: UN Labour Organization (ILO) Calls for Recognition of the Sex Industry* (Coalition Against Trafficking in Women 1999)
- Richardson J, (ed) *Archbold Criminal Pleading Evidence and Practice 2013 Ed.* (Sweet & Maxwell 2013)
- Rook P, Ward R, *On Sexual Offences* (Sweet and Maxwell 1997)
- Ryan C, Hall CM, *Sex Tourism: Marginal People and Liminalities* (Routledge 2001)
- Sample R, *Exploitation: What it is and why it's Wrong* (Rowman & Littlefield 2003)
- Sanders T, O'Neill M, Pitcher J, *Prostitution: Sex work, policy & politics* (Sage 2009)
- Sanders T, *Sex Work: A Risky Business* (Willan 2005)
- *Paying for Pleasure: Men who Buy Sex* (Willan 2008)
- Scambler G, Scambler A, (eds) *Rethinking Prostitution: Purchasing Sex in the 1990s*

(Routledge 1997)

Seabrook J, *Travels in the Skin Trade: Tourism and the Sex Industry* (2nd edn Pluto Press 2001)

Seeskin K, *Autonomy in Jewish Philosophy* (Cambridge University Press 2001)

Sen A, *The Idea of Justice* (Penguin 2009)

Sharpe K, *Red Light, Blue Light: Prostitutes, punters and the police* (Ashgate 1998)

Sills D, (ed), John Gagnon, *International Encyclopaedia of the Social Sciences* (New York: Macmillan 1968)

Simmonds NE, *Central Issues in Jurisprudence* (2nd edn Sweet and Maxwell 2002)

Simon RJ, *Women and crime*. (Lexington, MA: Lexington Books, 1975)

Singer P, *Animal liberation* (Random House 1995)

Slapper G, Kelly D, *The English Legal System: Fourteenth Edition 2013-14* (14th edn Routledge 2013)

Soble A, (ed) *The Philosophy of Sex: Contemporary Readings* (Rowman & Littlefield 2002)

Spector J, *Prostitution and Pornography: Philosophical Debate about the Sex Industry* (Stanford University Press 2006)

Stanko E (ed), *The Meanings of Violence* (Routledge 2003)

Sullivan ML, *Making Sex Work: A Failed Experiment With Legalised Prostitution* (Spinifex 2007)

Thomas P (ed), *Socio-Legal Studies* (Dartmouth 1997)

Thorbek S, Pattanaik B (eds), *Transnational Prostitution: Changing Patterns in a Global Context* (Zed Books 2002)

Tomassi P, *Logic* (Routledge 1999)

Tong R, *Feminist Thought: A Comprehensive Introduction* (Hyman 1989)

Wacks R, *Understanding Jurisprudence: An Introduction to Legal Theory* (2nd edn OUP 2009)

Waldron J, (ed) *Theories of Rights* (OUP 1984)

Weitzer R, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (New York University Press 2012)

--*Sex for Sale: Prostitution, Pornography, and the Sex Industry* (Taylor & Francis e-

library 2009)

Wellings K, Field J, Johnson A, Wadsworth J, *Sexual behaviour in Britain* (Penguin 1994)

Williams B, *Morality: An Introduction to Ethics* (Cambridge University Press 1972)

Wilkinson R, *Women of the Streets: A Sociological Study of the Common Prostitute* (London: British Social and Biology Council 1955)

Wittgenstein L, *Philosophical Investigations* (1968)

Woolf L, Campbell-Holt C (Ed), *The Pursuit of Justice* (OUP 2008)

Wylie G, McRedmond P, *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave Macmillan 2010)

Zweigert K, Kotz H, *An Introduction to Comparative Law* (1997 North Holland)

ii. Reports & working papers

- APPG *Shifting the Burden* (2014) All-Party Parliamentary Group on Prostitution and the Global Sex Trade
- Eurostat European Commission, '*Trafficking in Human Beings 2013 Edition*' (2013) European Publications Office
- Home Office, 'Coordinated Prostitution Strategy' (2006) Home Office Publications
- Home Office, '*Organised Crime: Revenues, Economic and Social Costs, and Criminal Assets Available for Seizure*' (2007) Home Office Publications
- Home Office, 'Paying the Price: A Consultation Paper on Prostitution' (2004) London: Home Office Communication Directorate
- International Labour Office, *International Labour Organisation Estimate of Forced Labour: Results and Methodology* (2012)
- Secretary of State for the Home Department, *First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking* (2012)
- Serious Organised Crime Agency, *SOCA Intelligence Assessment - UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011* (2012) UKHTC/SOCA
- US Department of State, *Trafficking in Persons Report June 2012* (2012)
- Barnett L, Casavant L, Nicol J, *Prostitution: A Review of Legislation in Selected Countries* (2011) Publication No. 2011-115-E Canadian Library of Parliament
- Cherti M, Pennington J, Galos E, *The UK's Response to Human Trafficking: Fit For Purpose?* (2012) Institute for Public Policy Research
- Cherti M, Pennington J, Grant P, *Beyond Borders: Human Trafficking from Nigeria to the UK* (2013) Institute for Public Policy Research
- Cusick L, Martin A, May T, *Vulnerability and Involvement in Drug Use and Sex Work* (2004) Research Study 268 Home Office, London
- Danna D, '*Report on prostitution laws in the European Union*' Department of Social Science and Politics, University of Milan, 2014
- Day S, 'Prostitution: Violating the Human Rights of Poor Women' (2008) Action ontarienne contra la violence faite aux femmes, translated French-English by Diane Archambault
- Gangoli G, '*Silence, Hurt and Choice: Attitudes to Prostitution in India and the West*' (2000) Asia Research Centre Working Paper 6
- Grant R, 'Criminalisation of the Purchase of Sex (Scotland) Bill (2)' (2012) Scottish Parliamentary Consultation Papers
- Honeyball M, *Report on sexual exploitation and prostitution and its impact on gender equality* (2013/2103(INI) European Parliament Report (3rd February 2014)

Hubbard P, *Regulating the Spaces of Sex Work: assessing the impact of prostitution law: Full Research Report ESRC End of Award Report* (2007) ESRC End of Award Report RES-000-22-1001, Swindon: ESRC

Macleod J, Farley M, Anderson L, Golding J, *Challenging Men's Demand for Prostitution in Scotland* (2008) Women's Support Project

Mossman E, '*International Approaches to Decriminalising or Legalising prostitution*' (2007) Crime and Justice Research Centre Victoria University of Wellington

O'Connor M, Healy G, 'The Links between Prostitution and Sex Trafficking: A Briefing Handbook' (2006) Coalition Against Trafficking in Women/European Women's Lobby

Puidokiene D, '*Covert Codes of Women in Prostitution: Pathways for Recovering Roots after Trauma Interface*' University of Lapland 2012

Raymond J, Hughes D M, Gomez C J, '*Sex trafficking of women in the United States*' (2001) Coalition Against Trafficking in Women

Waldron J, *Cruel, Inhuman, and Degrading Treatment: The Words Themselves* (2008) Public Law & Legal Theory Research Paper Series Paper no. 08-36, New York University School of Law

Waltman M, 'Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential' (2011) 34 Women's Studies International Forum 449

-- *Prohibiting Purchase of Sex in Sweden: Impact, Obstacles, Potential, and Supporting Escape* (2010) Department of Political Science, Stockholm University

iii. Articles

-- Archbold Review, 'Trafficking in human beings - Council of Europe Convention on Action Against Trafficking in Human Beings Art 26 - non-punishment obligation' (2012) 3 Archbold Review 3

-- Criminal Law Review Editorial Review 'The Policing and Crime Act 2009' (2010) 2 Criminal Law Review 91

-- Criminal Law Review, 'Slavery – Australia' (2008) 12 Criminal Law Review 1005

-- European Human Rights Law Review: Case Comment, 'Prostitution: prostitute required to make social security contributions – forced prostitution – Art. 3 & 4(2)' (2008) 1 European Human Rights Law Review 135

-- The Economist, 'Briefing: prostitution and the internet' (2014) The Economist, 9th August 2014, 17

Aria-Yokoi Y, 'Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR [2003] Netherlands HRQ 385

Armstrong E, 'The Sociology of Prostitution', (1981) 1(1) Sociological Spectrum 91

Ashworth A, 'Trafficking people for exploitation: arranging individual's entry into United Kingdom with intention to exploit' (2012) 1 Criminal Law Review 63

Audet E, 'Prostitution: Rights of Women or right to women?' (2003) Sisyphe <http://sisyphe.org/spip.php?article108> accessed 10 February 2013

Bagley C, 'Adolescent Prostitution in Canada and the Philippines' (1999) 42(4) International Social Work 445

Bain P, Park J, Kwok C, Haslam N, 'Attributing Human Uniqueness and Human Nature to Cultural Groups: Distinct Forms of Subtle Dehumanization' (2009) 12 Group Processes & Intergroup Relations 789

Barnard M, 'Violence and vulnerability: conditions of work for streetworking prostitutes' (1993) 15(5) Sociology of Health and Illness 683

Barrett J, 'Dignatio and the Human Body' (2005) 21 South African Journal on Human Rights 525

Basoglu M, 'Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the Distinction Real or Apparent?' (2007) American Medical Association, <http://archpsyc.jamanetwork.com> accessed 14th June 2013

Bastian B, Haslam N, 'Experiencing Dehumanization: Cognitive and Emotional Effects of Everyday Dehumanization' (2011) 33 Basic and Applied Social Psychology 295

Becker H, 'Victims of human trafficking in Ireland - caught in a legal quagmire' (2010) 24(2) Journal of Immigration and Asylum and Nationality Law 134

Bell R, 'Sex Trafficking: a financial crime perspective' (2001) 9(2) Journal of Financial Crime 165

Bernstein E, 'The Meaning of the Purchase: Desire, Demand and the Commerce of Sex' (2001) 2 Ethnography 389

-- 'What's Wrong with prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labour' (1999) 10 Hastings Women's Law Journal 91

Bouclin S, 'Regulating sex work in Canada' (2012) Public Law 387

Boynton P, 'Life on the streets: The experiences of community researchers in a study of prostitution' (2002) 12(1) Journal of Community & Applied Social Psychology 1

Bradley GV, 'Morality and legal reasoning (1993) 2 The Review of Politics 311

Brewer M, 'The Prosecution of child victims of trafficking' (2012) 4 Archbold Review 4

Brooks-Gordon B, 'Bellwether Citizens: The Regulation of Male Clients of Sex Workers' (2010) 37(1) Journal of Law and Society 145

-- 'Clients and commercial sex: reflections on Paying the Price: a Consultation Paper on Prostitution' (2005) Criminal Law Review 425

-- 'State violence towards sex workers' (2008) 337 British Medical Journal 527

Brooks-Gordon B, Gelsthorpe L, 'Prostitutes' Clients, Ken Livingston and a New Trojan Horse' (2003) 42 The Howard Journal 437

-- 'What men say when apprehended for kerb crawling: A model of prostitutes clients' talk' (2003) 9(2) Psychology, Crime & Law 145

Burt M, 'Cultural myths and supports for rape' (1980) 38 Journal of Personality and Social Psychology 217

Busch N, Bell H, Hotaling N, Monto M, 'Male Customers of Prostituted Women' (2002) 8(9) Violence Against Women 1093

Butcher K, 'Confusion between prostitution and sex trafficking' (2003) 361(9373) The Lancet 1983

Cameron S, Collins A, 'Estimates of a Model of Male Participation in the Market for Female Heterosexual Prostitution Services' (2003) 16 European Journal of Law and Economics 271

Campbell J, 'Litigating human dignity: the Roman-Dutch common law' (2011) 4 European Human Rights Law Review 375

Campbell R, 'Treating crimes against sex workers as hate crime: a tool in the recognition of the rights of sex workers to public protection and justice?' (2014) Paper presented at Sex Work and Human Rights Conference, University of Durham Law School, 18 September 2014

- Carozza P, 'Human dignity and judicial interpretation of human rights: a reply' (2008) 19(5) *European Journal of International Law* 931
- Carpenter B, 'The Prostitute and the Client: Challenging the Dualisms' (1998) 21(4) *Women's Studies International Forum* 387
- Castano E, Kofta M, 'Dehumanization: Humanity and its Denial' (2009) 12(6) *Group Processes & Intergroup Relations* 695
- Cho SY, Dreher A, Neumayer E, 'Does Legalized Prostitution Increase Human Trafficking?' (2013) 41 *World Development* 67
- Chuang J, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2009) 158 *University of Pennsylvania Law Review* 1655
- Cusick L, Kinnell H, Brooks-Gordon B, Campbell R, 'Wild guesses and conflated meanings? Estimating the size of the sex worker population in Britain' (2009) 29 *Critical Social Policy* 703
- Davis K, 'The Sociology of Prostitution' (1937) 2 *American Sociological Review* 744
- Doezema J, 'Now you see her, Now you don't: Sex Workers at the UN Trafficking Protocol Negotiation' (2005) 14 *Social & Legal Studies* 61
- 'Ouch! Western Feminists' 'Wounded Attachment' to the 'Third World Prostitute' (2001) 67 *Feminist Review* 16
- 'Sex worker rights, abolitionism, and the possibilities for a rights-based approach to trafficking' (2005) *Women in Action* 20
- 'Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol' (2002) 10(1) *Gender and Development* 20
- Drew S, 'You're Missing the Points' (2008) 105(46) *Law Society's Gazette* 6
- Duffy P J, 'Article 3 of the European Convention on Human Rights' (1983) 32(2) *The International and Comparative Law Quarterly* 316
- Edlund L, Korn E, 'A Theory of Prostitution' (2002) 110(1) *Journal of Political Economy* 181
- Egan S, 'Protecting the victims of trafficking: problems and prospects' (2008) 1 *European Human Rights Law Review* 106
- Ekberg G, 'The Swedish Law That Prohibits the Purchase of Sexual Services' (2004) 10(10) *Violence Against Women* 1187
- Elliott J, '(Mis)identification of victims of human trafficking: the case of R v O' (2009) 21(4) *International Journal of Refugee Law* 727
- Esmeir S, 'On Making Dehumanization Possible' (2006) 121(5) *PMLA* 1544
- Farley M, "'Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if

- Legalized or Decriminalized' (2004) 10 Violence Against Women 1087
- 'Prostitution and the Invisibility of Harm' (2003) 26(3-4) Women & Therapy 247
- 'Prostitution Harms Women Even if Indoors: Reply to Weitzer' (2005) 11 Violence Against Women 950
- 'Prostitution, Trafficking and Cultural Amnesia: What We Must *Not Know* in Order to Keep the Business of Sexual Exploitation Running Smoothly' (2006) 18 Yale Journal of Law and Feminism 101
- 'Prostitution: A Worldwide Business of Sexual Exploitation' (2007) Seeing Ourselves: Classic, Contemporary, and Cross-cultural Readings in Sociology 266
- 'Theory versus reality: Commentary on four articles about trafficking for prostitution' (2009) 32 Women's Studies International Forum 311
- Farley M, Baral I, Kiremire M, Sezgin U, 'Prostitution in Five Countries: violence and post-traumatic stress disorder' (1998) 8 Feminism and Psychology 405
- Farrugia R, 'State responsibility for human trafficking – perspectives from Malta' (2012) 15(2) Journal of Money Laundering Control 142
- Foucault M, 'The Subject and Power' (1982) 8(4) Critical Inquiry 777
- Gaylin W, 'In Defense of the Dignity of Being Human' (1984) 14(4) The Hastings Center Report 18
- Gibbens T, Silberman M, 'The Clients of Prostitutes' (1960) 36 British Journal of Venereal Disease 113
- Gibly J, 'Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?' (2012) 4(4) International Journal of Undergraduate Research and Creative Activities 1
- Gilbert A, 'An Analysis of Human Trafficking Cases in the English Court of Appeal' (2007)
- 'Confusing Trafficking with Smuggling: The Offence of Human Trafficking For Sexual Exploitation in English Law' (2007)
- Gilbert A, Moore C, 'Human Trafficking in the United Kingdom: The Journey So far and the Road Ahead' (2010) 194 Criminal Lawyer 2
- Glensy R, 'The Right to Dignity' (2011) 43(65) Columbia Human Rights Law Review 65
- Goldberg S, 'Europe's Modern Slave Trade' (2009) 84 European Lawyer 50
- Goodey J, 'Human Trafficking: Sketchy data and policy responses' (2008) 8 Criminology and Criminal Justice 421 <http://crj.sagepub.com/content/8/4/421> accessed 12 December 2012
- Gray K, Knobe J, Sheskin M, Bloom P, Barrett L, 'More Than a Body: Mind Perception and

the Nature of Objectification' (2011) 101(6) *Journal of Personality and Social Psychology* 1207

Green A, 'A philosophical taxonomy of European human rights law' (2012) 1 *European Human Rights Law Review* 71

-- 'An absolute theory of Convention rights: why the ECHR gives rise to legal rights that cannot conflict with each other' (2010) 16 *UCL Jurisprudence Review* 75

Grenz S, 'Intersections of Sex and Power in Research on Prostitution: A Female Researcher Interviewing Male Heterosexual Clients' (2005) 30(4) *Signs* 2091

Grief N, Addo M, 'Is there a Policy Behind the Decisions and Judgments Relating to Article 3 of the European Convention on Human Rights?' (1995) *European Law Review* 178

Gross O, 'The Prohibition on Torture and the Limits of the Law', taken from Sanford Levinson (ed) *Torture* (OUP 2004)

Habermas J, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41(4) *Metaphilosophy* 464

Hales L, Gelsthorpe L, 'The Criminalisation of Migrant Women' (2012) Institute of Criminology, University of Cambridge

Harding R, Hamilton P, 'Working girls: abuse and choice in street-level sex work? A study of homeless women in Nottingham', (2008) *British Journal of Social Work*, available at <http://bjsw.oxfordjournals.org/cgi/content/abstract/bcm157>

Hart G, Barnard M, "'Jump on top, get the job done": strategies employed by female prostitutes to reduce the risk of client violence', (2003) from E Stanko (ed), *The Meanings of Violence* (London: Routledge 2002/3)

Hart H M, 'The Aims of the Criminal Law' (1958) 23(3) *Law and Contemporary Problems* 401

Hartling L, Luchetta T, 'Humiliation: Assessing the impact of derision, degradation, and debasement' (1999) 19(4) *Journal of Primary Prevention* 259

Haslam N, 'Dehumanization: An Integrative Review' (2006) 10(3) *Personality and Social Psychology Review* 252

Haslam N, Loughnan S, Reynolds C, Wilson S, 'Dehumanization: A New Perspective' (2007) 1(1) *Social and Personality Psychology Compass* 409

Havelková B, 'Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes' (2011) 18 *Cardozo Journal of Law and Gender* 55

Heflick N, Goldenberg J, 'Objectifying Sarah Palin: Evidence that objectification causes women to be perceived as less competent and less fully human' (2009) 45 *Journal of Experimental Social Psychology* 598

Heidensohn F, 'The Deviance of Women: A Critique and an Enquiry' (1968) 19(2) *British Journal of Sociology* 160

Henry L, 'The Jurisprudence of Dignity', (2011) 160(169) University of Pennsylvania Law Review 169

Hohfeld W, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning (1913) 23(1) The Yale Law Journal 16

Hollway W, 'Gender Difference and the Production of Subjectivity' in Henriques I, Hollway W, Brown C, Venn C, Walkerdine V (eds) *Changing the Subject* (London and New York: Methuen 1984)

Holmstrom N, 'Exploitation' (1977) 7(2) Canadian Journal of Philosophy 353

Holt T, Blevins K, 'examining sex work from the client's perspective: assessing johns using on-line data' (2007) 28 Deviant Behaviour 333

Holzman H, Pines S, 'Buying sex: The phenomenology of being a john' (1982) 4(1) Deviant Behaviour 89

Hubbard P, Matthews R, Scoular J, 'Regulating sex work in the EU: prostitute women and the new spaces of exclusion' (2008) 15(2) Gender, Place and Culture 137

Hughes D, 'The Demand: Where Sex Trafficking Begins' *Speech at A Call to Action: Joining the Fight Against Trafficking in Persons US Embassy and the Holy See, Pontifical Gregorian University* 17 (2004).

Huisman W, Kleemans ER, 'The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands' (2014) Crime, Law and Social Change 1

Isaacs N, 'Fault and Liability' (1918) 31(7) Harvard law Review 954

Jacobson N, 'A taxonomy of dignity: a grounded theory study' (2009) 9(3) BMC International Health and Human Rights 1

Jakobsson N, Kotsadam A, 'The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation' (2013) 35(1) European Journal of Law & Economics 87

Jordan A, 'The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering' (2012) 4 American University Washington College of Law 5

Jordan AD, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human beings' (2002) 10(1) Gender and Development 28

Kantola J, Squires J, 'Discourses Surrounding Prostitution Policies in the UK' (2004) 11 European Journal of Women's Studies 77

Kass L, 'Defending Human Dignity' (2007) Bradley Lecture at the American Enterprise Institute, February 5 2007

Kempadoo K, 'Globalizing Sex Workers' Rights (2003) 22(3-4) Canadian Woman Studies

Kennedy S, 'Prostitution: The New 'Abolitionism'' (2012) 1(4) Irish Marxist Review 16

Keren-Paz T, 'Poetic Justice: why sex slaves should be able to sue ignorant clients in conversion' (2010) 29(3) Law and Philosophy 307

Keren-Paz T, Levenkron N, 'Clients' strict liability towards victims of sex-trafficking' (2009) 29(3) Legal Studies 438

Khaitan T, 'Dignity as an Expressive Norm: Neither Vacuous Nor a Panacea' (2012) 32(1) Oxford Journal of Legal Studies 1

Kingston S, Thomas T, 'The Anti-social Behaviour, Crime and Policing Act 2014: implications for sex workers and their clients' (2015) Policing and Society 1

Kinnell H, 'Clients of Female Sex Workers: men or monsters?' (2006) Sex work now 141

Klein D, 'The Humiliation Dynamic: An Overview' (1991) 12(2) Journal of Primary Prevention 93

Leidholdt D, 'Prostitution: A Violation of Women's Human Rights' (1993-4) 1 Cardozo Women's Law Journal 133

Liebenberg S, 'The Value of Human Dignity in Interpreting Socio-Economic Rights' (2005) 21(1) South African Journal on Human Rights 1

Lindner E, 'Humiliation and Human Rights: Mapping a Minefield' (2001) Human Rights Review 46

Loughnan S, Haslam N, Murnane T, Vaes J, Reynolds C, Suitner C, 'Objectification leads to depersonalization: The denial of mind and moral concern to objectified others' (2010) 40 European Journal of Social Psychology 709

Lowman J, 'Violence and the Outlaw Status of (Street) Prostitution in Canada' (2000) 6(9) Violence Against Women 987

Lucas A, 'The work of sex work: Elite prostitutes' vocational orientations and experiences' (2005) 26(6) Deviant Behaviour 513

MacKinnon C, 'Prostitution and Civil Rights' (1993) 1 Michigan Journal of Gender & Law 13

Macklin R, 'Dignity is a useless concept' (2003) 327 British Medical Journal 1419

Madden Dempsey M, 'Rethinking Wolfenden: prostitute-use, criminal law, and remote harm' (2005) Criminal Law Review 444

-- 'Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism' (2010) 158 University of Pennsylvania Law Review 1729

Mann J, Dignity and Health: The UDHR's Revolutionary First Article (1998) 3(2) Health and Human Rights 30

- , Gostin L, Gruskin S, Brennan T, Lazzarini Z, Fineberg H V 'Health and human rights' (1994) Health and human rights 6
- Månsson S, 'Men's demand for prostitutes' (2006) 15 Sexualities 87
- Margalit A, 'Human Dignity between the Kitsch and Deification' (2004-5) Essay given at Litowitz Lecture, Yale University October 14th 2004
- , Gabriel Motzkin, 'The Uniqueness of the Holocaust' (1996) 25 Philosophy and Public Affairs 65
- Martin Moen O, 'Is Prostitution Harmful?' (2012) Journal of Medical Ethics, <http://jme.bmj.com/content/early/2012/08/27/medethics-2011-100367.full> accessed 17th June 2013
- McCrudden C, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) European Journal of International Law 655
- McGeehan N, 'Transnational crime or state exploitation? The Trafficking of migrant workers to the United Arab Emirates' (2012) 26(1) Journal of Immigration Asylum and Nationality Law 27
- McGlynn C, 'Rape, torture and the European Convention on Human Rights' (2009) 58(3) International & Comparative Law Quarterly 565
- Mgbako C, Smith L, 'Sex Work and Human Rights in Africa' (2010) 33 Fordham International Law Journal 1178
- Miles A, 'Prostitution, Trafficking and The Global Sex Industry: A Conversation With Janice Raymond (CHECK) 22(3)(4) Canadian Woman Studies/Les Cahiers De La Femme 26
- Miller J, Schwartz M, 'Rape myths and violence against street prostitutes' (1995) 16 Deviant Behaviour 1
- Misztal B, 'The idea of dignity: its modern significance' (2013) 16 European Journal of Social Theory 101
- Mitsilegas V, 'Trafficking: guidance - trafficking people committing criminal offences - correct approach to prosecutions' (2011) 5 Criminal Law Review 425
- Monto M, 'Female Prostitution, Customers, and Violence' (2004) 10 Violence Against Women 160
- , Hotaling N, 'Predictors of Rape Myth Acceptance Among Male Clients of Female Street Prostitutes' (2001) 7 Violence Against Women 275
- , McRee J, 'A Comparison of the Male Customers of Female Street Prostitutes with National Samples of Men' (2005) 20(10) International Journal of Offender Therapy and Comparative Criminology 1
- Murray A, 'Trafficking sex slaves horror: *time to challenge the anti-prostitution lobby*' [citation unknown]

Nussbaum M, 'Objectification' (1995) 24(4) Philosophy & Public Affairs 249

--, "'Whether from Reason or Prejudice": Taking Money for Bodily Services' (1998) 27(s2) The Journal of Legal Studies 693

O'Brien E, 'Fuelling Traffic: abolitionist claims of a causal nexus between legalised prostitution and trafficking' (2011) 56(5) Crime Law and Social Change 547

O'Connell Davidson J, 'The anatomy of 'free choice' prostitution' (1995) 2(1) Gender, Work & Organization 1

--, 'The Rights and Wrongs of Prostitution' (2002) 17(2) Hypatia 84

--, 'Will the real sex slave please stand up?' (2006) 83 Feminist Review 4

O'Mahony C, 'There is no such thing as a right to dignity' (2012) 10(2) International Journal of Constitutional Law 551

--, 'There is no such thing as a right to dignity: A rejoinder to Emily Kidd White' (2012) 10(2) International Journal of Constitutional Law 585

O'Neill M, 'Cultural Criminology and Sex Work: Resisting Regulation through Radical Democracy and Participatory Action Research (PAR)' (2010) 37(1) Journal of law and Society 210

Oriel J, 'Sexual pleasure as a human right: Harmful or helpful to women in the context of HIV/AIDS?' (2005) 28 Women's Studies International Forum 392

Overall C, 'What's Wrong with Prostitution? Evaluating Sex Work' (1992) 17(4) Signs 705

Palmer S, 'A wrong turning: Article 3 ECHR and proportionality' (2006) 65(2) Cambridge Law Journal 438

Papadaki E, 'Sexual Objectification: From Kant to Contemporary Feminism' (2007) 6 Contemporary Political Theory 330

Pinker S, 'The Stupidity of Dignity' (2008) May 12 2008 The Richard Dawkins Foundation for Reason and Science [http://richarddawkins.net/article,2567,The –Stupidity-of-Dignity](http://richarddawkins.net/article,2567,The-Stupidity-of-Dignity), Steven-Pinker

Pitcher J, Wijers M, 'The impact of different regulatory models on the labour conditions, safety and welfare of indoor-based sex workers' (2014) Criminology and Criminal Justice (Online DOI 10.1177/1748895814531967) accessed 22nd July 2014

Plummer K, 'Review Article: A Round Up of Some Recent Books on Prostitution and Sex Work' (2010) 13 Sexualities 394

Plumridge E, Chetwynd S, Reed A, Gifford S, 'Discourses of Emotionality in Commercial Sex: The Missing Client Voice' (1997) 7(2) Feminism & Psychology 165

Primoratz I, 'What's Wrong with Prostitution?' (1993) 68(264) Philosophy 159

Radacic I, 'Rape cases in the jurisprudence of the European Court of Human Rights: defining rape and determining the scope of the state's obligations' (2008) 3 European Human Rights Law Review 357

Radin M, 'A Restatement of Hohfeld' (1938) 51(7) Harvard Law Review 1141

Rao N, 'On the Use and Abuse of Dignity in Constitutional Law' (2007) 14 Columbia Journal of European Law 201

--, 'Three Concepts of Dignity in Constitutional Law' (2011) 86(1) Notre Dame Law Review 183

Raymond J, 'Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere' (1998) 21(1) Women's Studies International Forum 1

--, 'Prostitution on Demand: Legalizing the Buyers as Sexual Consumers' (2004) 10 Violence Against Women <http://vaw.sagepub.com/content/10/10/1156> accessed 3 December 2012

--, 'Sex trafficking is not "sex work"' (2005) 26(1) Conscience 45

--, 'The New UN Trafficking Protocol' (2002) 25(5) Women's Studies International Forum 491

--, '10 Reasons for Not Legalizing Prostitution' (2003) <http://prostitutionresearch.com/ten-reasons.html> accessed 11 February 2013

Reanda L, 'Prostitution as a Human Rights Question: Problems and Prospects of the United Nations Action' (1991) 13(2) Human Rights Quarterly 202

Reaume D, 'Indignities: Making a Place for Dignity in Modern Legal Thought' (2002) 28 Queens Law Journal 61

Richards D, 'Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution' (1979) 127(5) University of Pennsylvania Law Review 1195

Sanders T, 'Blinded by morality? Prostitution policy in the UK' (2005) 29 Capital and Class 9

--, 'Controllable Laughter: Managing Sex Work Through Humour' (2004) 38 Sociology 273

--, 'It's Just Acting': Sex Workers' Strategies for Capitalizing on Sexuality' (2005) 12(4) Gender, Work and Organization 319

--, 'Male Sexual Scripts: Intimacy, Sexuality and Pleasure in the Purchase of Commercial Sex' (2008) 42 Sociology 400

--, 'Sexing Up the Subject: Methodological Nuances in Researching the Female Sex Industry' (2006) 9 Sexualities 449

--, 'The policing of pleasure: "What kind of police service do we want?"' (2011) Police Journal 84(2) 110

--, Campbell R, 'Designing out vulnerability, building in respect: violence, safety and sex work policy' (2007) 58(1) British Journal of Sociology 1

Schachter O, 'Human Dignity as a Normative Concept' (1983) 77(4) The American Journal of International Law 848

Scorer R, 'Zero Tolerance', (2008) 158 New Law Journal 50

Scoular J, 'The "subject" of prostitution: interpreting the discursive, symbolic and material position of sex/work in feminist theory' (2004) 5(3) Feminist Theory 343

--, 'What's Law Got to Do With it? How and Why Law Matters in the Regulation of Sex Work' (2010) 37(1) Journal of Law and Society 12

--, Carline A, 'A critical account of a 'creeping neo-abolitionism': Regulating prostitution in England and Wales' (2014) 14(5) Criminology and Criminal Justice 608

--, O'Neill M, 'Regulating Prostitution: Social Inclusion, Responsibilization, and the Politics of Prostitution Reform' (2007) 47 British Journal of Criminology 764

--, Pitcher J, Campbell R, Hubbard P, O'Neill M, 'What's anti-social about sex work? The changing representation of prostitution's incivility' (2007) 6(1) Safer Communities 11

--, Sanders T, 'Introduction: The Changing Social and Legal Context of Sexual Commerce: Why Regulation Matters' (2010) 37(1) Journal of Law and Society 1

Sen A, 'Human rights and capabilities' (2005) 6(2) Journal of Human Development 151

Sensat J, 'Exploitation' (1984) 18(1) APA Western Division Meetings 21

Sensen O, 'Human dignity in historical perspective: the traditional and contemporary paradigms' (2011) 10(1) European Journal of Political Theory 71

Shapiro D, 'The Nature of Humiliation' (2004) Paper given at "Humiliation and Violent Conflict" conference, Columbia University

Snyder C, 'Needs Exploitation' (2008) 11(4) Ethical Theory and Moral Practice 389

Soothill K, Sanders T, 'Calling the tune? Some observations on Paying the Price: a consultation paper on prostitution' (2004) 15(4) Journal of Forensic Psychiatry & Psychology 642

--, 'The Geographical Mobility, Preferences and Pleasures of Prolific Punters: a Demonstration Study of the Activities of Prostitutes' Clients' (2005) 10(1) Sociological Research Online, <http://www.socresonline.org.uk/10/1/soothill.html>.

Spanger M, 'Human trafficking as a lever for feminist voices? Transformations of the Danish policy field of prostitution' (2011) 31 Critical Social Policy 517

Sproat P, 'A critique on the official discourse on drug and sex trafficking by organised crime using data on asset recovery' (2012) 19(2) Journal of Financial Crime 149

Sullivan M, 'Legalization: The Australian Experience' (2002) 8 Violence Against Women 1140

Thomas D, 'Sentencing: trafficking for purposes of exploitation - Asylum and Immigration

(Treatment of Claimants etc.) Act 2004' (2011) 4 Criminal Law Review 336

Tileagă C, 'Ideologies of moral exclusion: A critical discursive reframing of depersonalization, delegitimization and dehumanization' (2007) 46(4) British Journal of Social Psychology 717

Torres W, Bergner R, 'Humiliation: Its Nature and Consequences' (2010) 38(2) The Journal of the American Academy of Psychiatry and the Law 195

Vaes J, Paladino P, Puvia E, 'Are sexualized women complete human beings? Why men and women dehumanize sexually objectified women' (2011) (41) European Journal of Social Psychology 774

Valverde M, 'The Harms of Sex and the Risks of Breasts: Obscenity and Indecency in Canadian Law' (1999) 8 Social Legal Studies 181

Wahab S, Sloan L, 'Ethical Dilemmas in Sex Work Research' (2004) 7 Research for Sex Work 3

Waltman M, 'Prohibiting Sex Purchasing and Ending Trafficking: the Swedish Prostitution Law' (2011) 33 Michigan Journal of International Law 133

--, 'Sweden's prohibition of purchase of sex: The law's reasons, impact and potential' (2011) 34 Women's Studies International Forum 449

Warkentin E, "'Jack the Ripper" Strikes Again: The "Ipswich Ripper" and the "vice girls" he killed.' (2010) 10(1) Feminist Media Studies 35

Waytz A, Epley N, Cacioppo JT, 'Social Cognition Unbound: Insights Into Anthropomorphism and Dehumanization' 19(1) Current Directions in Psychological Science 58

Weitzer R, 'Flawed Theory and Method in Studies of Prostitution' (2005) 11(7) Violence Against Women 934

--, 'Legalizing Prostitution: Morality Politics in Western Australia' (2009) 49 British Journal of Criminology 88

--, 'New directions in research on prostitution' (2005) 43(4-5) Crime, Law and Social Change 211

--, 'Prostitution: Facts and Fictions' (2007) 6(4) Contexts 28

--, 'Rehashing Tired Claims About Prostitution: A Response to Farley and Raphael and Shapiro' (2005) 11 Violence Against Women 971

--, 'Sex Trafficking and the Sex Industry: The Need for Evidence Based Theory and Legislation' (2012) 101(4) Journal of Criminal law and Criminology 1337

--, 'Sociology of sex work' (2009) 35 Annual Review of Sociology 213

--, 'The Movement to Criminalize Sex Work in the United States' (2010) 37(1) Journal of Law and Society 61

--, 'The Mythology of Prostitution: Advocacy Research and Public Policy' (2010) 7 Sex Res Soc Policy 15

--, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35 Politics Society <http://pas.sagepub.com/content/35/3/447> accessed 1 November 2012

White EK, 'There is no such thing as a right to human dignity: A reply to Conor O'Mahony' (2012) 10(2) International Journal of Constitutional Law 575

Williamson C, Folaron G, 'Understanding the experiences of street level prostitutes' (2003) 2(3) Qualitative Social Work 271

Winick C, 'Prostitutes' clients' perceptions of the prostitute and themselves' (1962) 8(3) International Journal of Social Psychiatry 289

Wiessner, S, Willard A R, 'Policy-Oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity' (1999) American Journal of International Law 316

Zatz N, 'Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution' (1997) 22(2) Signs 277

Zelizer V, 'The Purchase of Intimacy' (2000) 25(3) Law and Social Inquiry 817

Zilli L, 'The crime of rape in the case law of the Strasbourg institutions' (2002) 13(2) Criminal Law Forum 245

iv. Theses

Abel G, 'Decriminalisation: A harm minimisation and human rights approach to regulating sex work' (PhD thesis, University of Otago, NZ 2010)

Doezema J, 'Sex Slaves and Discourse Masters: The Historical Construction of 'Trafficking in Women'' (PhD thesis, University of Sussex 2004/5)

Kalwahali K, 'The Criminalization of Prostitution in South African Criminal Law' (Masters thesis, University of South Africa 2005)

Siripatthanakosol K, 'Human Trafficking for Sexual Exploitation: The Framework of Human Rights Protection' (PhD thesis, Newcastle University 2010)

Sondhi S, 'Are We Chasing Rainbows?: Achieving the Decriminalization of Prostitution in Canada' (Masters thesis, University of Toronto 2010)

Van Driel E, "What humiliation feels like in different contexts" (Masters Thesis, University of Amsterdam, 2011)

Webster E, 'Exploring the Prohibition of Degrading treatment Within Article 3 of the European Convention on Human Rights' (PhD Thesis, University of Edinburgh 2009)

Westwood J, 'The social construction of risk in child trafficking discourses: A study of melodramatic tactics in child trafficking narratives' (PhD thesis, University of Central Lancashire 2010)

Wilson J, 'Morality, Dignity and Pragmatism: an Essay on the Future of Morality' (PhD thesis, University College London 2002)

v. Websites

Avert - <http://www.avert.org/>

Canadian Legal Information Institute - <http://www.canlii.org>

COYOTE LA - <http://www.coyotela.org/>

English Collective of Prostitutes - <http://prostitutescollective.net/>

Global Network of Sex Work Projects - <http://www.nswp.org/research-sex-work>

Human Rights Watch - <http://www.hrw.org>

International Union of Sex Workers - <http://www.iusw.org/>

National Ugly Mugs Scheme - <https://uknswp.org/um/>

New Zealand Prostitutes' Collective - <http://www.nzpc.org.nz/>

Open Doors (NHS) - <http://www.opendoors.nhs.uk/>

ProCon.Org – South Africa v Jordan and others: Summary of Judgment
<http://prostitution.procon.org/sourcefiles/SouthAfricavJordanSummaryJudgement.pdf>
accessed 23rd January 2013

Sex Work Research - <http://sexworkresearch.wordpress.com/>

APPENDIX A

TABLE OF REVIEWED CASES OF THE EUROPEAN COURT OF HUMAN RIGHTS – ARTICLE 3 CLAIMS⁶³³

<u>CASE</u>	<u>TYPE</u>	<u>VIOLATION OF ART 3?</u>
Abdulaziz v UK (1985) 7 E.H.R.R. 471	Immigration/discrimination	N
Adali v Turkey (38187/97) (2005)	State harassment/intimidation	N
Aerts v Belgium (2000) 29 E.H.R.R. 50	Detention	N
Ahmad v United Kingdom (24027/07); Al-Fawwaz v United Kingdom (67354/09); Bary v United Kingdom (66911/09); Mustafa (aka Abu Hamza) v United Kingdom (36742/08); Ahsan v United Kingdom (11949/08);	Extradition	N
Ahmed v Austria (1997) 24 E.H.R.R. 278	Extradition	Y
Ahmet Mete v Turkey (2009) 49 E.H.R.R. 48	Detention	N
Aksoy v Turkey	Detention	Y

⁶³³ Search Method and Criteria: On 4th February 2013, a search of the database Westlaw under the search term for cases of “degrading treatment” returned 816 results.

Alver v Estonia (2006) 43 E.H.R.R. 40	Detention	Y
Anguelova v Bulgaria 38361/97	Police brutality	Y
Athan v Turkey 36144/09	Military brutality	Y
Aydin v Turkey (application no. 23178/94) (1998) 25 EHRR 251	Rape in Detention	Y
Bader v Sweden (13284/04)	Deportation	Y
Becciev v Moldova (9190/03)	Detention	Y
Bekos v Greece 15250/02	Detention	Y
Berrehab v The Netherlands 10730/84	Deportation	N
Cenbauer v Croatia (73786/01)	Detention	Y
Chahal v United Kingdom (1997) 23 E.H.R.R. 413	Extradition/Deportation	Y
DG v Ireland 39474/98	Detention	N
Dankevich v Ukraine 40679/98	Detention (death row)	Y
Dizman v Turkey 27309/95	Police brutality	Y
Gurepka v Finland 61406/00	Detention	Y
Guzzardi v Italy (1981) 3 EHRR 333	Detention	N
HLR v France (24573/94)	Deportation	N (followed Chahal)
Hulki Gunes v Turkey	Detention	Y

(28490/95)		
Indelicato v Italy (34442/97) [Commission Decision]	Detention	See Decision
Lupascu v Romania (2009) 49 E.H.R.R. 25	Detention	Y
Kalashnikov v Russia (47095/99)	Detention	Y
Karalevicius v Lithuania (2002) 35 E.H.R.R. CD146	Detention	Y
Khudoyorov v Russia (6847/02)	Detention	Y
Kudla v Poland 30210/96	Detention (mental health)	N
Labita v Italy 26772/95	Detention	Partial
Marckx v Belgium (1979-80) 2 E.H.R.R. 330	Laws of succession	N
McGlinchey v United Kingdom (50390/99)	Detention	Y
Moldovan and Others v Romania 41138/98	Living conditions	Y
MS v United Kingdom (24527/08)	Detention (mental health)	Y
Muslim v Turkey 53566/99	Deportation	N
N v Finland (38885/02)	Deportation	Y
Napier v Scottish Ministers 2005 1 S.C. 229	Detention	Y
Nevmerzhitsky v Ukraine (54825/00)	Detention (force-feeding)	Y
Nita v Romania (10778/02)	Police brutality	Y

Novoselov v Russia (66460/01)	Detention (overcrowding)	Y
Ocalan v Turkey 46221/99	Detention (death row)	Y
Osman v Bulgaria (2008) 47 E.H.R.R. 48	Police brutality	Y
Ribitsch v Austria (A/336)	Police brutality	Y
Soering v UK	Extradition (death row)	Y
Tarariyeva v Russia (4353/03)	Detention	Y
Tomasi v France	Detention	Y
Ulke v Turkey (39437/98)	Detention/military service	Y

<u>CASE</u>	<u>TYPE</u>	<u>VIOLATION OF ART 3?</u>
A (A Child) (Disclosure of Third Party Information), Re [2012] 3 W.L.R. 1484 (SC)	Trial procedure, disclosure	N
A v UK (application no.25599/94)	Corporal punishment	
Afanasyev v Ukraine no. 38722/02	Detention	Y
Akkum v Turkey (2006) 43 E.H.R.R. 26	Missing person/family members anguish	Y
Albert v Belgium (1983) 5 E.H.R.R. 533	Disciplinary proceedings	N
Avsar v Turkey 25657/94	Racial Discrimination	N
Bilgin (Yhsan) v Turkey (23819/94)	Military brutality	Y
Campbell and Cosans v United Kingdom (1982) (application no's 7511/76; 7743/76)	Corporal Punishment	N
Costello-Roberts v United Kingdom (1995) 19 EHRR	Corporal Punishment	N

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Cyprus v Turkey (2002) 35 EHRR 30	Missing persons/family members anguish	Y
E v United Kingdom (2003) 36 E.H.R.R. 31	Sexual abuse, Local Authority obligations	Y
Er v Turkey 23016/04 (2013) 56 E.H.R.R. 13	Missing persons/family members anguish	Collates law on missing persons etc
Gongadze v Ukraine 34056/02	Failed investigation, anguish suffered	Y
Herczegfalvy v Austria (1993) 15 E.H.R.R. 437	Detention, mental health	N
Jalloh v Germany (54810/00)	Detention, forced vomiting	Y
Kanagaratnam v Belgium (15297/09)	Situational anguish	N
LCB v United Kingdom (1999) 27 E.H.R.R. 212	Military service, radiation	N
Lopez Ostra v Spain (1995) 20 E.H.R.R. 277	Living conditions, smells	N
Nesibe Haran v. Turkey (application no. 28299/95)	Family members' anguish	N
Nsona v Netherlands (23366/94)	Deportation	
Şeker v. Turkey (application no. 52390/99)	Family members' anguish	N
T v United Kingdom (24724/94); V United Kingdom (24888/94)	Trial, mode of trial, children	N
Tanis v Turkey (65899/01)	Missing persons/family members' anguish	Y
Timurtas v Turkey (23531/94)	Missing persons/family members' anguish	Y
Toğcu v. Turkey (application no. 27601/95)	Missing persons/family members' anguish	N
Valsamis v Greece (1997) 24 E.H.R.R. 294	Suspension from school	N
Z v United Kingdom (29392/95)	LA obligations to children	Y

<u>CASE</u>	<u>TYPE</u>	<u>VIOLATION OF ART 3?</u>
A v United Kingdom – (1999) 27 E.H.R.R. 611	Punishment	Y
Aydin v Turkey (1998) 25 EHRR 251	Police brutality, rape in custody	Y
Bensaid v United Kingdom 44599/98	Deportation, mental health, good statement on positive obligations on states	Y
Bulyanko v. Ukraine (application no. 74432/01)	Non-enforcement of a judgment	N
D v United Kingdom (30240/96)	Drug trafficker, AIDS sufferer, care provision despite criminality	Y
Devrim turan v. Turkey (2006) (application no. 879/02)	Detention, gynaecological exam	N
Dougoz v Greece app no 40907/98	Detention, statement of degrading treatment	Y
DP v United Kingdom (38719/97)	Sexual abuse, Local Authority knowledge	N
Iwańczuk v. Poland (application no. 25196/94)	Detention, stripping unnecessary to vote	Y
Juhnke v Turkey (2009) 49 E.H.R.R. 24	Detention, gynaecological exam	N
Maslova v Russia (2009) 48 EHRR 37	Police brutality, rape in custody	Y
MC v Bulgaria (2005) 40 EHRR 20	Prosecution of rape as a crime	Y
SW v United Kingdom; CR v United Kingdom (1996) 21 EHRR 363	Marital rape, discussion of Article 3	N
Tremblay v France (37194/02)	Prostitution, economic need, government implication	N

CASE	CATEGORY	VIOLATION?

Er v Turkey (23016/04) (2013) 56 EHRR 13	Disappearance/family members' anguish	Y
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APPENDIX B

TABLE OF NARRATIVES

	Narrative	Commentary
i	"It bothered me in the beginning that all I was, was a piece of meat someone was f**king" ⁶³⁴	Expresses language of objectification, exploitation, disintegration and dehumanization. Also expresses issues of self-infliction of dignity violation and coping mechanisms
ii	'It's much easier these days. I just shut my eyes and think of something else – switch off. I've learned how to block it – it's not me that's there, it's my body only' ⁶³⁵	Coping mechanisms; disintegration, bodily dissociation
iii	'When you're constantly having sex with different guys every night – up to six or even eight – and getting paid for it, you have to switch off and mentally say "It's not me" and 'It's my body he's paying for'" ⁶³⁶	Coping mechanisms; disintegration and bodily dissociation
iv	'In the end, you hate yourself for selling your body. They [the punters] do what they want to you. Your body's an object and you've got no control over it.' ⁶³⁷	Direct reference to objectification and dehumanization; exploitation
v	"If anything a prostitute treats herself like a chair for someone to sit on. Her mind goes	Strong connotations of objectification, dehumanization; self-inflicted violation

⁶³⁴ 'Katrina' in J Phoenix, *Making Sense of Prostitution* (Palgrave 1999) 131

⁶³⁵ 'Katrina', *Ibid*

⁶³⁶ 'Helena', *Ibid* 133

⁶³⁷ 'Lois', *Ibid* 133

	<p>blank. She just lies there. You become just an object. A lot of clients say 'Respond, it doesn't seem normal just lying there'. After a while it becomes just a normal thing. Most of them know – they understand it would be physically impossible. You don't get excited. Some you like, you talk to them, you get to know them but it's still the same turn off thing."⁶³⁸</p>	
vi	<p>'In every room in the massage parlor [sic] there's an oversized Barbie doll head which holds Kleenex. You pull a Kleenex out of the top of the doll's head. The doll heads were the owner's idea, but Pat and I hate them. Pat says that pulling out a Kleenex is like pulling a little bit of brains out of the doll's head. At the rate we use Kleenex, I figure none of the dolls can have much gray [sic] matter left by now. I think much the same about myself sometimes. I feel this job eating at me until I wonder if I'm all hollow inside'.⁶³⁹</p>	<p>Example of a PV narrative. Indication of disintegration, psychological harm and emotional distress.</p> <p>Self-infliction of MOV such as abjection, (i.e. failing to recognise one's own worth, losing self-respect)</p>
vii	<p>'Having a presence and physical body which men found sexually attractive was important to my self-esteem. Having men pay to get turned on by me was an affirmation of my sexual power...Men could want and need me'.⁶⁴⁰</p>	<p>PV narrative; expressing autonomy as dignity. Contradictions between agency and dignity violation</p>

⁶³⁸ 'Dee' in Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press1998) 39

⁶³⁹ 'Judy Edelstein' in Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press1998) 67

⁶⁴⁰ 'Judy Helfand', *Ibid* 101

viii	<p>"I think it's a natural thing. We often discuss it in work and laugh about it, not laugh at the clients but the things you can be thinking of when you're having sex with a client are ridiculous – like I'm thinking how many calories I've had that day or something totally the opposite. I'm definitely not thinking about sex. The nearest you come to thinking about sex is the money. You're usually thinking, 'it's £20, oh good' It sounds a bit mercenary but you're usually thinking 'This will meet that bill.' That's usually the closest you'll come to thinking about the act".⁶⁴¹</p>	Coping mechanisms in the PE; language of agency
ix	<p>'What I never saw was that in basing my self worth [sic] on men's desire I was far from developing a true sense of worth based on self love [sic]. I see this false sense of power as one way internalized oppression keeps us down.'⁶⁴²</p>	PV narrative; personal reflection on the narrator's sense of self-worth.
x	<p>'Having a customer fondle a breast, for instance, may not be pleasant, especially if he is rough, but it doesn't feel like being violated. It's part of a job, and really no different than if he touched an elbow. It's not sexual; its work. Using our whole bodies to earn a living makes it clear how much sexual feelings really come into our minds: a lover may touch the same</p>	Expressions of autonomy as dignity. This represents an apparent conflation of dignity promotion and violation

⁶⁴¹ 'Shirley', in E McLeod, *Women Working: Prostitution Now* (London: Croom Helm 1982) 39

⁶⁴² 'Shirley, Ibid

	way a customer does, but produce an entirely different feeling'. ⁶⁴³	
xi	'I've had a lot of different jobs. I've worked in canning factories, which is horrendous work. That's why prostitution was so nice for me. Because you got a lot of money. You didn't take harassment. You didn't allow it. You were in control of the situation'. ⁶⁴⁴	An account of the promotion of dignity through agency and thus promotion of autonomy as dignity
xii	'...it isn't fair! We should be proud! No one understands or respects us. I hate this secrecy and isolation'. ⁶⁴⁵	Stigmatisation towards the prostitution vocation. Pride in vocation. An example of a pro-sex work narrative.
xiii	'At work, I don't let myself get emotionally involved. I know that if I let myself get involved, I will have problems. I just do the job, get dressed and go home. When I go out there, I'm putting on an act. I'm not getting no rocks off, believe me. In all my years of working, I've never come on stage, with a girl, with a guy, or with myself. When I go out there, it's just like putting on a business suit and going downtown to work'. ⁶⁴⁶	Coping mechanisms, freedom of agency, promotion of autonomy as dignity

⁶⁴³ 'Peggy Morgan' in Frédérique Delacoste, Priscilla Alexander, (eds), *Sex Work: Writings by Women in the Sex Industry* (2nd edn Cleiss Press 1998) 25

⁶⁴⁴ 'Debra', Ibid 93

⁶⁴⁵ 'Carol Leigh', Ibid 34

⁶⁴⁶ 'Samara', Ibid 38

xiv	<p>[Narrating a conversation with a client]</p> <p>"You like to see a man come?"</p> <p>"Uh huh."</p> <p>"I'd like to put it in, you know."</p> <p>"Would you?" Greed and disgust wrestled within me...I undressed and we lay down on the mattress. I turned my head to my side so he wouldn't try to kiss me.⁶⁴⁷</p>	Expressions of intrusion and abjection. Agency present, but conflated with dignity violation
xv	<p>It's a business. There's nothing in it for me pleasure wise – I fake and pretend a lot for the client – that's what they pay for – but I never get any actual enjoyment. I get on with it and get it over with as quickly as possible. I'm not a criminal for doing this – I do what men pay for, it's my choice.⁶⁴⁸</p>	Language of agency and autonomy, power and control.
xvi	<p>I never let anyone touch my body. My body is my own, I'm in control of it. When I'm with a punter, I say what goes – what he can and</p>	Mixed expressions; a dislike for the work, but using coping mechanisms to undergo the PE.

⁶⁴⁷ 'Emma Marcus', Ibid 48

⁶⁴⁸ 'Belinda' in Sharpe K, *Red Light, Blue Light: Prostitutes, punters and the police* (Ashgate1998) 87

	can't do, and they never ever touch me. I cannot stand anyone touching my body. ⁶⁴⁹	Expressions of agency.
xvii	Would you like men using you all the time? I'm not ashamed of what I do – if I was then I wouldn't do it. When I get depressed I need sex. Sex cheers me up, makes me feel better, that's why I work so much. ⁶⁵⁰	Mixed expressions of abjection and autonomy. Psychological and social issues expressed.
xviii	I'm not ashamed of what I do. I know people make remarks but I take a great deal of pride in what I do...I wear different wigs to cover up my real identity, I use them so I can disguise myself, block out what I'm really doing. When I put on the wig and the short skirt I become a different person. I try to fool myself, I suppose. ⁶⁵¹	Conflicting language used, coping mechanisms.
xix	When it comes to the actual sex I just blank my mind off completely. I pretend I'm someone else. I pretend I'm somewhere else. I don't get any pleasure from the sex. Never. I always pretend I'm having a good time and that my client is brilliant because men have their egos massaged – you have to make them think they are brilliant – they pay us to make them feel better about themselves. ⁶⁵²	Treating the PE as an act, and separation between the working version and the personal version of the self.

⁶⁴⁹ 'Imogen', Ibid 87

⁶⁵⁰ 'Imogen', Ibid 88

⁶⁵¹ 'Beryl', Ibid 87

⁶⁵² 'Beryl', Ibid 87-88

xx	<p>“Never, never will he lie on <i>my</i> bed. He’ll lie on a special sheet, on a blanket, but not on the bed that’s my own bed. My sheets are my property, identity, that’s where I bury my head, that’s where I feel me, in my own smells. This might seem odd of course, since there’s contact between the clients and my skin; you’d think my skin was closer to ‘me’ than the sheet, but I can wash my skin afterwards. My body can be cleaned, and besides, this body isn’t the same body – the one the client gets isn’t the real one, it’s not mine. I never go to bed at night – even if I’m exhausted, worn-out – without at least having taken a shower or a bath.”⁶⁵³</p>	Efforts to dissociate working practices and personal space.
xxi	<p>“You wouldn’t go into the jungle disguised as a lamb; it’s instinctive, but after all, it’s only instinct which prompts us to put a screen in front of our real personality, to shelter it.”⁶⁵⁴</p>	Justifying the defensive tactics used in the PE.

⁶⁵³ ‘E’ in C Jaget (ed), *Prostitutes – Our Life* (Bristol: Falling Wall Press 1980) 151

⁶⁵⁴ Ibid, 150

xxii	<p>“Ugh, the whole thing is sick. I close my eyes and ears. I cut out everything to do with feelings. It’s never, never okay. It would be totally different with a lover. I’ll stop when I get a steady boyfriend”⁶⁵⁵</p>	<p>Abjection, disgust. Disintegration and coping mechanisms.</p>
xxiii	<p>“It gives you a feeling of power in your job too; everyone likes to be admired. So you could say there’s something positive about the job. When I was down there and lots of cars honked at me and I could say yes or drop it. I learned fast that I didn’t need to go down there as a beggar – it’s the woman who decides. After a while I learned that I was the one made the rules; there were enough people to choose from. If people didn’t want to follow my rules that was it”⁶⁵⁶</p>	<p>Expressions of agency and autonomy. Themes of power and control</p>
xxiv	<p>“The worst is that it’s not as bad as people make out. Down there you block it all out, you get totally sexless, that’s a fact. But you can’t function with a man, it won’t work. It just won’t work. So Fredrik and I didn’t have a sex life at</p>	<p>Psychological effects of prostitution, emotional issues, coping mechanisms, relational issues.</p>

⁶⁵⁵ ‘Lisa’ in C Høigård, L Finstad, *Backstreets: Prostitution, Money and Love* (Cambridge: Polity 1992) 65

⁶⁵⁶ ‘Eva’, *ibid* 83

	<p>all. That's the price you pay when you go there...even though I looked that professionally at the whole thing, it affected my sex life. It is something that touches you anyhow."⁶⁵⁷</p>	
xxv	<p>INTERVIEWER: Have you done [sold sex to] him more than once?</p> <p>ALISON: I have done him about four times, like this were t'fifth time maybe and it were just, we had done the business and he had had a shower afterwards. I got sorted out, got dressed, saying nice to see you again, blah blah blah, the next thing he just fucking attacked me.</p> <p>INTERVIEWER: How did he do that?</p> <p>ALISON: All of a sudden he says 'it would be good to see you again' all of a sudden it were just like he...just like total change – he just punched me, just straight in my mouth.</p> <p>INTERVIEWER: There was no warning?</p> <p>ALISON: There was no warning at all, he just did it, he just did it...I was that shocked because I was on the floor then, like my God what's going on...by this time he was kicking the hell out of me. He started kicking my body. I was on the floor, he was kicking me in the head, in my face. I mean the time</p>	Violence in the prostitution encounter

⁶⁵⁷ 'Eva', ibid 107

	<p>he finished with me there was lumps all over me head. The whole attack must have lasted I would say 30-40 seconds.⁶⁵⁸</p>	
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⁶⁵⁸ 'Alison' in Kinnell H, 'Murder made easy: the final solution to prostitution?' in R Campbell, M O'Neill, *Sex Work Now* (Cullompton: Willan 2006) 144

APPENDIX C
DATASET FOR NARRATIVES

TEXT	ERA	LOCATION	NO. INTERVIEWED	MARKET/S
C Høigård, L Finstad, <i>Backstreets: Prostitution, Money and Love</i> (Cambridge: Polity 1992)	c.1980s-90s	Norway	26	Street
J Phoenix, (Ed) <i>Making Sense of Prostitution</i> (Palgrave 1999)	c.1990s	UK	21	Mixed
K Sharpe, <i>Red Light, Blue Light: Prostitutes, punters and the police</i> (Ashgate1998)	c.1980s-90s	UK	100	Street
E McLeod, <i>Women Working: Prostitution Now</i> (London: Croom Helm 1982)	c.1980s	UK	>20	Mixed
F Delacoste, P Alexander, (Eds), <i>Sex Work: Writings by Women in the Sex Industry</i> (2 nd edn Cleiss Press1998)	c.1970s-90s	USA, France	>20	Mixed
C Jaget (ed) <i>Prostitutes, our life</i> (Bristol: Falling Wall	c.1970s	France	>20	Mixed

Press 1980)				
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